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IDAHO CODE

CONTAINING THE

GENERAL LAWS OF IDAHO

ANNOTATED

ORIGINALLY PUBLISHED BY AUTHORITY OF
LAWS 1947, CHAPTER 224

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LAWS 1949, CHAPTER 167 AS AMENDED

Compiled Under the Supervision of the
Idaho Code Commission

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TITLES 21-24

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PUBLISHER'S NOTE

Since the publication in 2001 of former Replacement Titles 21 to 24, many laws have been amended or repealed and many new laws have been enacted. The resulting increase in the size of the cumulative supplement for the former volume has made it necessary to revise this volume. Accordingly, Replacement Titles 21 to 24 are issued with the approval and under the direction of the Idaho Code Commission.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals, and the appropriate federal courts, posted on *lexis.com* as of April 12, 2009. These cases will be printed in the following reports:

Idaho Reports

Pacific Reporter, 3rd Series

Federal Supplement, 2nd Series

Federal Reporter, 3rd Series

United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Article 3, § 22 of the Idaho State Constitution provides: "No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law."

Section 67-510 Idaho Code provides: "No act shall take effect until July 1 of the year of the regular session or sixty (60) days from the end of the session at which the same shall have been passed, whichever date occurs last, except in case of emergency, which emergency shall be declared in the preamble or body of the law."

Every joint resolution, unless a different time is prescribed therein, takes effect from its passage."

This table is given in order that the effective date of acts, not carrying an emergency or which do not specify an effective date, may be determined with a minimum of delay.

Year	Adjournment Date
1921	March 5, 1921
1923	March 9, 1923
1925	March 5, 1925
1927	March 3, 1927
1929	March 7, 1929
1931	March 5, 1931
1931 (E.S.)	March 13, 1931
1933	March 1, 1933
1933 (E.S.)	June 22, 1933
1935	March 8, 1935
1935 (1st E.S.)	March 20, 1935
1935 (2nd E.S.)	July 10, 1935
1935 (3rd E.S.)	July 31, 1936
1937	March 6, 1937
1937 (E.S.)	November 30, 1938
1939	March 2, 1939
1941	March 8, 1941
1943	February 28, 1943
1944 (1st E.S.)	March 1, 1944
1944 (2nd E.S.)	March 4, 1944
1945	March 9, 1945
1946 (1st E.S.)	March 7, 1946
1947	March 7, 1947
1949	March 4, 1949
1950 (E.S.)	February 25, 1950
1951	March 12, 1951
1952 (E.S.)	January 16, 1952

1953	March 6, 1953
1955	March 5, 1955
1957	March 16, 1957
1959	March 9, 1959
1961	March 2, 1961
1961 (1st E.S.)	August 4, 1961
1963	March 19, 1963
1964 (E.S.)	August 1, 1964
1965	March 18, 1965
1965 (1st E.S.)	March 25, 1965
1966 (2nd E.S.)	March 5, 1966
1966 (3rd E.S.)	March 17, 1966
1967	March 31, 1967
1967 (1st E.S.)	June 23, 1967
1968 (2nd E.S.)	February 9, 1968
1969	March 27, 1969
1970	March 7, 1970
1971	March 19, 1971
1971 (E.S.)	April 8, 1971
1972	March 25, 1972
1973	March 13, 1973
1974	March 30, 1974
1975	March 22, 1975
1976	March 19, 1976
1977	March 21, 1977
1978	March 18, 1978
1979	March 26, 1979
1980	March 31, 1980
1981	March 27, 1981
1981 (E.S.)	July 21, 1981
1982	March 24, 1982
1983	April 14, 1983
1983 (E.S.)	May 11, 1983
1984	March 31, 1984
1985	March 13, 1985
1986	March 28, 1986
1987	April 1, 1987
1988	March 31, 1988
1989	March 29, 1989
1990	March 30, 1990
1991	March 30, 1991
1992	April 3, 1992
1992 (E.S.)	July 28, 1992
1993	March 27, 1993
1994	April 1, 1994
1995	March 17, 1995
1996	March 15, 1996
1997	March 19, 1997

1998	March 23, 1998
1999	March 19, 1999
2000	April 5, 2000
2001	March 30, 2001
2002	March 15, 2002
2003	May 3, 2003
2004	March 20, 2004
2005	April 6, 2005
2006	April 11, 2006
2006 (E.S)	August 25, 2006
2007	March 30, 2007
2008	April 2, 2008
2009	May 8, 2009

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21-101. Definitions. — As used in this chapter, unless the context otherwise requires:

(a) "Aeronautics" means the science and art of flight and including but not limited to transportation by aircraft; the operation, construction, repair,

or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports or other air navigation facilities; and instruction in flying or ground subjects pertaining thereto.

(b) "Aircraft" means any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air.

(c) "Airport" means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon. The term "airport" shall include such other common terms as aviation field, airfield, intermediate landing field, landing field, landing area, airstrip and landing strip. For the purposes of this chapter, the term "airport" refers to a publicly owned and managed facility that is open for public use without operational restrictions on its use.

(d) "Department" means the Idaho transportation department.

(e) "Director" means the director of the Idaho transportation department.

(f) "State" or "this state" means the state of Idaho.

(g) "Air navigation facility" means any facility, other than one owned or operated by the United States, used in, available for use in, or designed for use in, aid of air navigation, including any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities, or devices used or useful as an aid, or constituting an advantage or convenience, to the safe takeoff, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

(h) "Operation of aircraft" or "operate aircraft" means the navigation or piloting of aircraft in the airspace over this state or upon any airport within this state.

(i) "Airman" means any individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way, and any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances, and any individual who serves in the capacity of aircraft dispatcher, or air-traffic control-tower operator; but does not include any individual employed outside the United States, or any individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances, to perform duties as inspector or mechanic in connection therewith, or any individual performing inspection or mechanical duties in connection with aircraft owned or operated by him.

(j) "Aeronautics instructor" means any individual who for hire or reward engages in giving instruction or offering to give instruction in flying or ground subjects pertaining to aeronautics; but excludes any instructor in a public school, university, or institution of higher learning duly accredited and approved for carrying on collegiate work, who instructs in flying or ground subjects pertaining to aeronautics, only in the performance of his duties at such school, university or institution.

(k) "Air school" means: (1) any aeronautics instructor who advertises, represents or holds out as giving or offering to give instruction in flying or ground subjects pertaining to aeronautics; and (2) any person who advertises, represents or holds out as giving or offering to give instruction in flying or ground subjects pertaining to aeronautics whether for or without hire or reward; but excludes any public school, or university, or institution of higher learning duly accredited and approved for carrying on collegiate work.

(l) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(m) "Municipality" means any county, city, district or other political subdivision or public corporation, of this state. "Municipal" means pertaining to a municipality as herein defined.

(n) "Aviation hazard" means any new or existing structure, object of natural growth, use of land, or modification thereto, which endangers the lives and property of users of an airport, or of occupants of land in its vicinity, and that reduces the size of the area available for landing, taking off and maneuvering of aircraft, or extends up into the airspace between airports to cause disastrous and needless loss of life and property.

(o) "State airway" means a route in the navigable airspace over and above the lands or waters of this state, designated by the board as a route suitable for air navigation.

(p) "Board" means the Idaho transportation board.

(q) "Public transportation" means rail, mass transit, and any other public transportation activities in which the state may become involved. [1947, ch. 153, § 1, p. 378; am. 1974, ch. 12, § 95, p. 61; am. 2005, ch. 174, § 1, p. 537.]

STATUTORY NOTES

Cross References. — Counties and municipalities authorized to cooperate, § 21-401 et seq.

Director of Idaho transportation department, § 40-503.

Idaho transportation board, § 40-301 et seq.

Idaho transportation department, § 40-501 et seq.

Regional airports, § 21-801 et seq.

JUDICIAL DECISIONS

Cited in: Dunham v. Hackney Airpark, Inc., 133 Idaho 613, 990 P.2d 1224 (Ct. App. 1999).

RESEARCH REFERENCES

Am. Jur. — 8A Am. Jur. 2d, Aviation, § 1.

A.L.R. — Liability of United States, under Federal Tort Claims Act (28 U.S.C.A. §§ 1346(b), 2671 et seq.) or Suits in Admi-

rality Act (46 App. U.S.C.A. §§ 741 et seq.), for injuries or damages arising from issuance, preparation, or distribution of charts, maps, or like navigational aids. 164 A.L.R. Fed. 541.

21-102. Declaration of purpose. — It is hereby declared that the purpose of this act is to further the public interest and aeronautical progress:

(a) By providing for the protection and promotion of safety in aeronautics;
 (b) By cooperating in effecting uniformity of the laws and regulations relating to the development and regulation of aeronautics in the several states consistent with federal aeronautics laws and regulations;

(c) By granting to a state agency such powers and imposing upon it such duties that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within such jurisdiction, assist in the development of a statewide system of airports, cooperate with and assist the municipalities of this state and others engaged in aeronautics, and encourage and develop aeronautics;

(d) By establishing only such regulations as are essential in order that persons engaged in aeronautics of every character may so engage with the least possible restriction, consistent with the safety and the rights of others; and

(e) By providing for cooperation with the federal authorities in the development of a national system of civil aviation and for coordination of the aeronautical activities of those authorities and the authorities of this state. [1947, ch. 153, § 2, p. 378.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1947, ch. 153, compiled herein as §§ 21-101, 21-102, 21-104 to 21-112, 21-113 to

24-124. The reference probably should be to "this chapter", being chapter 1, title 21, Idaho Code.

21-103. Aeronautics department. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1947, ch. 153, § 3, p. 378; am. 1949, ch. 226, § 1, p. 474; am. 1971, ch. 136,

§ 4, p. 522, was repealed by S.L. 1974, ch. 12, § 1, p. 61.

21-104. Development of aeronautics — General supervision. — The department shall have general supervision over aeronautics within this state. It is empowered and directed to encourage, foster, and assist in the development of aeronautics in this state and to encourage the establishment of airports and air navigation facilities. It shall cooperate with and assist the federal government, the municipalities of this state, and other persons in the development of aeronautics, and shall seek to coordinate the aeronautical activities of these bodies and persons. Municipalities are authorized to cooperate with the department in the development of aeronautics and aeronautics facilities in this state. [1947, ch. 153, § 4, p. 378; am. 1974, ch. 12, § 96, p. 61; am. 1992, ch. 149, § 1, p. 447.]

STATUTORY NOTES

Cross References. — Regional airports, § 21-801 et seq.

21-105. Municipal airports. — (a) Technical Services of the Department. The department may, insofar as is reasonably possible, make available its engineering and other technical services, with or without charge, to any municipality or person desiring them in connection with the planning, acquisition, construction, improvement, maintenance or operation of airports or air navigation facilities.

(b) State Financial Assistance. The department may render financial assistance by grant or loan or both to any municipality or municipalities acting jointly, in the planning, acquisition, construction, improvement, maintenance, or operation of an airport owned or controlled, or to be owned or controlled by such municipality or municipalities, out of appropriations made by the legislature for such purposes. Such financial assistance may be furnished in connection with federal or other financial aid for the same purposes.

(c) Federal Aid. The department is authorized to act as agent of any municipality or municipalities acting jointly, upon the request of such municipality or municipalities, in accepting, receiving, receipting for and disbursing federal moneys, and other moneys public or private, made available to finance, in whole or part, the planning, acquisition, construction, improvement, maintenance, or operation of a municipal airport or air navigation facility; and if requested by such municipality or municipalities may act as its or their agent in contracting for and supervising such planning, acquisition, construction, improvement, maintenance or operation; and all municipalities are authorized to designate the department their agent for the foregoing purposes. The department, as principal on behalf of the state, and any municipality, on its own behalf, may enter into any contracts, with each other or with the United States or with any person, which may be required in connection with a grant or loan of federal moneys for municipal airport or air navigation facility purposes. All federal moneys accepted under this section shall be accepted and transferred or expended by the department upon such terms and conditions as are prescribed by the United States. All moneys received by the department pursuant to this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which such moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are hereby appropriated for the purposes for which the same were made available, to be disbursed or expended in accordance with the terms and conditions upon which they were made available.

(d) No municipality, county, regional airport authority in this state, except airports serving regularly scheduled airlines certified by an agency of the federal government, whether acting alone or jointly with another local public entity or with the state, shall submit to any federal agency or department of the United States any project application under the provisions of any act of congress which provides airport planning funds, or airport construction and development funds for the expansion and improvement of the airport system, unless the pre-application for federal assistance has

been first submitted to and approved by the Idaho transportation department. [1947, ch. 153, § 5, p. 378; am. 1975, ch. 113, § 1, p. 232.]

RESEARCH REFERENCES

Am. Jur. — 8A Am. Jur. 2d, Aviation, § 82 of aircraft flight paths or altitudes. 36 et seq. A.L.R.3d 1314.

A.L.R. — Validity of municipal regulation

21-106. State airports. — (a) Establishment, Operation, Maintenance. The department is authorized on behalf of and in the name of the state, out of appropriations and other moneys made available for such purposes, to plan, establish, construct, enlarge, improve, maintain, equip, operate, regulate, protect and police airports and air navigation facilities, either within or without the state. For such purposes the department may, by purchase, gift, devise, lease, condemnation or otherwise, acquire property, real or personal, or any interest therein including easements in aviation hazards or land outside the boundaries of an airport or airport site, as are necessary to permit safe and efficient operation of the airports or to permit the removal, elimination, hazard-marking or hazard-lighting of aviation hazards, or to prevent the establishment of aviation hazards. In like manner the department may acquire existing airports and air navigation facilities, provided however it shall not acquire or take over any airport or air navigation facility owned or controlled by a municipality of this or any other state without the consent of such municipality. The department may by sale, lease, or otherwise, dispose of any such property, airport, air navigation facility, or portion thereof or interest therein. Such disposal by sale, lease, or otherwise, shall be in accordance with the laws of this state governing the disposition of other property of the state, except that in the case of disposals to any municipality or state government or the United States for aeronautical purposes incident thereto, the sale, lease, or other disposal may be effected in such manner and upon such terms as the department may deem in the best interest of the state.

(b) Airport Zoning. Nothing contained in this chapter shall be construed to limit any right, power or authority of the state or a municipality to regulate aviation hazards by zoning.

(c) Joint Operations. The department may exercise any powers granted by this section jointly with any municipalities or agencies of the state government, with other states or their municipalities, or with the United States.

(d) Condemnation. In the condemnation of property authorized by this section, the department shall proceed in the name of the state in the manner provided by chapter 7, title 7, Idaho Code. For the purpose of making surveys and examinations, relative to any condemnation proceedings, it shall be lawful to enter upon any land, doing no unnecessary damage.

(e) Federal Aid. The department is authorized to accept, receive, receipt for, disburse and expend federal moneys, and other moneys public or private, made available to accomplish, in whole or in part, any of the purposes of this section. All federal moneys accepted under this section shall

be accepted and expended by the department upon such terms and conditions as are prescribed by the United States. In accepting federal moneys under this section, the department shall have the same authority to enter into contracts on behalf of the state as is granted to the department under section 21-105(c), Idaho Code, with respect to federal moneys accepted on behalf of municipalities. All moneys received by the department pursuant to this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which such moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are hereby appropriated for the purpose of which the same were made available, to be disbursed or expended in accordance with the terms and conditions upon which they were made available. [1947, ch. 153, § 6, p. 378; am. 2005, ch. 174, § 2, p. 537.]

STATUTORY NOTES

Cross References. — Airport Zoning Act, § 21-501 et seq.

Lease of state lands, §§ 58-304 — 58-310.
Sale of state lands, §§ 58-313 — 58-323.

RESEARCH REFERENCES

Am. Jur. — 8A Am. Jur. 2d, Aviation, § 82 et seq.

A.L.R. — Liability insurance for airport operations. 92 A.L.R.3d 1267.
Slip or fall at airport. 3 A.L.R.3d 938.

21-107. State airways, charts and bulletins. — The department may designate, design, and establish, expand, or modify a state airways system which will best serve the interest of the state. It may chart such airways system and arrange for publication and distribution of such maps, charts, notices and bulletins relating to such airways as may be required in the public interest. The system shall be supplementary to and coordinated in design and operation with the federal airways system. It may include all types of air navigation facilities, whether publicly or privately owned, provided that such facilities conform to federal safety standards. [1947, ch. 153, § 7, p. 378.]

RESEARCH REFERENCES

Am. Jur. — 8A Am. Jur. 2d, Aviation, § 82 et seq.

21-108. Contracts — Law governing. — The department may enter into any contracts necessary to the execution of the powers granted it by this act. All contracts made by the department, either as the agent of the state or of any municipality, shall be made pursuant to the laws of the state governing the making of like contracts; provided, however, that where the planning, acquisition, construction, improvement, maintenance, or operation of any airport, or air navigation facility is financed wholly or partially with federal moneys, the department[,] as agent of the state or of any municipality, may let contracts in the manner prescribed by the federal

authorities acting under the laws of the United States and any rules or regulations made thereunder. [1947, ch. 153, § 8, p. 378.]

STATUTORY NOTES

Compiler's Notes. — The bracketed comma in the last sentence was inserted by compiler. For words "this act", see Compiler's Notes, § 21-102.

21-109. Exclusive rights. — The department shall grant no exclusive right for the use of any airway, airport, or air navigation facility under its jurisdiction, but this section shall not be construed to prevent the making of contracts, leases and other arrangements pursuant to section 21-106[, Idaho Code]. [1947, ch. 153, § 9, p. 378.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion at the end of the section was added by the compiler.

21-110. Public purpose of activities. — The acquisition of any lands or interest therein pursuant to this act, the planning, acquisition, establishment, construction, improvement, maintenance, equipment, and operation of airports and air navigation facilities, whether by the state separately or jointly with any municipality or municipalities and the exercise of any other powers herein granted to the department are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity. All lands and other property and privileges acquired and used by or on behalf of the state in the manner and for the purposes enumerated in this act shall and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity. [1947, ch. 153, § 10, p. 378.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 21-102.

21-111. Rules, regulations, standards. — (a) Power to Issue. The department may perform such acts, issue and amend such orders, and make, promulgate, and amend such reasonable general or special rules, regulations and procedures, and establish such minimum standards, consistent with the provisions of this act, as it shall deem necessary to carry out the provisions of this act and to perform its duties hereunder; all commensurate with and for the purpose of protecting and insuring the general public interest and safety, the safety of persons operating, using or traveling in aircraft or persons receiving instructions in flying or ground subjects pertaining to aeronautics, and the safety of persons and property on land or water, and developing and promoting aeronautics in this state. No rule or

regulation of the department shall apply to airports or air navigation facilities owned or operated by the United States.

(b) **Conformity to Federal Enactments, Rules and Regulations.** All rules and regulations prescribed by the department under the authority of this act shall be kept in conformity(,) with the then current federal enactment governing aeronautics and the rules, regulations, and standards duly issued thereunder.

(c) **Distribution.** The department shall provide for the publication and general distribution of all its orders, rules, regulations and procedures having general effect. [1947, ch. 153, § 11, p. 378.]

STATUTORY NOTES

Compiler's Notes. — Parentheses around the comma in subsection (b) indicate that said comma should be deleted. For words "this act", see Compiler's Notes, § 21-102.

21-112. Reckless operation of aircraft. — It shall be unlawful for any person to operate an aircraft in the air, or on the ground or water, in a careless or reckless manner so as to endanger the life or property of another.

In any proceeding charging careless or reckless operation of aircraft in violation of this section, the court or jury, in determining whether the operation was careless or reckless, may consider the standards for safe operation of aircraft prescribed by federal statutes, federal regulations governing aeronautics and the rules, regulations and standards promulgated by the department. [1947, ch. 153, § 12, p. 378; am. 1989, ch. 229, § 1, p. 544.]

STATUTORY NOTES

Cross References. — Convictions to be noted on pilot's certificate, § 21-121. Suspension of violator's registration certificate, § 21-121.
 Penal provision, § 21-121.
 Report of violations to federal agencies, § 21-122.

RESEARCH REFERENCES

Am. Jur. — 8A Am. Jur. 2d, Aviation, § 208 et seq. **A.L.R.** — Liability for injury caused by spraying or dusting of crops. 37 A.L.R.3d 833.
C.J.S. — 2A C.J.S., Aeronautics & Aerospace, § 128 et seq. Liability for injury to guest in airplane. 40 A.L.R.3d 1117.

21-112A. Operating aircraft while under the influence of alcohol, drugs or any other intoxicating substances. — (1) It is unlawful for any person to pilot or be in actual physical control of an aircraft within this state, whether upon an airport or body of water, or in the airspace over this state:

- (a) Within eight (8) hours after the consumption of any alcoholic beverage;
- (b) While under the influence of alcohol;

(c) While using any drug that affects the person's faculties in any way contrary to safety; or

(d) While having an alcohol concentration of 0.04 as defined in subsection (5) of this section, or more, as shown by analysis of his blood, urine, or breath.

(2) Any person having an alcohol concentration of less than 0.04 as defined in subsection (5) of this section, as shown by analysis of his blood, urine, breath, or other bodily substance, by a test requested by an authorized law enforcement officer shall not be prosecuted for operating an aircraft while under the influence of alcohol, except as provided in subsection (3) of this section. Any person who does not take a test to determine alcohol concentration or whose test result is determined by the court to be unreliable or inadmissible against him, may be prosecuted for piloting or being in actual physical control of an aircraft while under the influence of alcohol, drugs, or any other intoxicating substances, on other competent evidence.

(3) If the results of the test requested by an authorized law enforcement officer show a person's alcohol concentration of less than 0.04, as defined in subsection (5) of this section, such fact may be considered with other competent evidence of drug use other than alcohol in determining the guilt or innocence of the defendant.

(4) Persons authorized to withdraw blood for the purposes of determining content of alcohol or other intoxicating substances are those persons authorized in section 18-8003, Idaho Code.

(5) For purposes of this chapter, an evidentiary test for alcohol concentration is a determination of the percent by weight of alcohol in blood and shall be based upon a formula of grams of alcohol per one hundred (100) cubic centimeters of blood, per two hundred ten (210) liters of breath or sixty-seven (67) milliliters of urine. Analysis of blood, urine or breath for the purpose of determining the blood alcohol concentration shall be performed by a laboratory operated by the Idaho state police or by a laboratory approved by the Idaho state police under the provisions of approval and certification standards to be set by that department, or by any other method approved by the Idaho state police. Notwithstanding any other provision of law or rule of court, the results of any test for alcohol concentration and records relating to calibration, approval, certification or quality control performed by a laboratory operated or approved by the Idaho state police or by any other method approved by the Idaho state police shall be admissible in any proceeding in this state without the necessity of producing a witness to establish the reliability of the testing procedure for examination.

(6) It is unlawful for any person who is an habitual user of, or under the influence of any narcotic drug, or who is under the influence of any other drug or any combination of alcohol and any drug to a degree which renders him incapable of safely piloting an aircraft, to pilot or be in actual physical control of an aircraft on an airport, body of water, or in the airspace above the state of Idaho. The fact that any person charged with a violation of the provisions of this subsection is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of a violation of the provision of this subsection.

(7) Notwithstanding any other provision of law, any evidence of conviction under this section shall be admissible in any civil action for damages resulting from the occurrence. A conviction for the purposes of this section means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment. [I.C., § 21-112A, as added by 1989, ch. 229, § 2, p. 544; am. 2000, ch. 469, § 55, p. 1450.]

21-112B. Test of pilot for alcohol concentration. — (1) Any person who pilots or is in actual physical control of an aircraft in this state shall be deemed to have given his consent to an evidentiary test for concentration of alcohol, drugs or other intoxicating substances as defined in section 21-112A, Idaho Code, provided that such test is administered at the request of a police officer having reasonable grounds to believe that person has been piloting or has been in actual physical control of an aircraft while under the influence of alcohol, drugs or of any other intoxicating substances.

(2) Such person shall not have the right to consult with an attorney before submitting to an evidentiary test for concentration of alcohol, drugs or other intoxicating substances.

(3) At the time an evidentiary test for concentration of alcohol, drugs or other intoxicating substances is requested, the person shall be informed that if he refuses to take the test:

- (a) That an affidavit of such fact will be filed with the administrator of the federal aviation agency;
- (b) That such refusal could result in the suspension or revocation of the person's certificate or rating, or denial of application for a certificate or rating, under federal aviation regulations; and
- (c) That after submitting to the test he may, when practicable, at his own expense, have additional tests made by a person of his own choosing. [I.C., § 21-112B, as added by 1989, ch. 229, § 3, p. 544.]

21-113. Federal airman and aircraft certificates. — (a) Operation Without Unlawful. It shall be unlawful for any person to operate, cause, or authorize to be operated any civil aircraft within this state unless such aircraft has an appropriate effective certificate, permit or license issued by the United States, if such certificate, permit or license is required by the United States.

It shall be unlawful for any person to engage in aeronautics as an airman in the state unless he has an appropriate effective airman certificate, permit, rating or license issued by the United States authorizing him to engage in the particular class of aeronautics in which he is engaged, if such certificate, permit, rating or license is required by the United States.

(b) Exhibition of Certificates. Where a certificate, permit, rating or license is required for an airman by the United States, it shall be kept in his personal possession when he is operating within the state and shall be presented for inspection upon the demand of any peace officer, or any other law enforcement officer of the state or of a municipality or official or employee of the department authorized pursuant to section 21-119[, Idaho

Code,] to enforce the aeronautics laws, or any official, manager or person in charge of any airport upon which the airman shall land, or upon the reasonable request of any other person. Where a certificate, permit or license is required by the United States for an aircraft, it shall be carried in the aircraft at all times while the aircraft is operating in the state, shall be conspicuously posted in the aircraft where it may be readily seen by passengers or inspectors, and shall be presented for inspection upon the demand of any peace officer, or any other law enforcement officer of the state or of a municipality official or employee of the department authorized pursuant to section 21-119[, Idaho Code,] to enforce the aeronautics laws, or any official, manager or person in charge of any airport upon which the aircraft shall land, or upon the reasonable request of any person. [1947, ch. 153, § 13, p. 378.]

STATUTORY NOTES

Cross References. — Penal provision, § 21-121. tions in subsection (b) were added by the compiler.

Compiler's Notes. — The bracketed inser-

RESEARCH REFERENCES

C.J.S. — 2A C.J.S., Aeronautics & Aerospace, § 184.

21-114. Registration of pilots and aircraft — Requisites. —

(a) Pilot Registration — Fees. Subject to the limitation of subsections (c) and (d) of this section, the department is authorized to require that every individual who pilots an aircraft within this state is to register with the department and to renew such registration every other year thereafter in which he pilots an aircraft within this state. The department may charge for each such registration, and for each biennial renewal thereof, a fee of twelve dollars (\$12.00). Such income shall be used for department expenses associated with search and rescue of lost aircraft and airmen and for pilot safety programs. Search and rescue coordination shall be under the direction and supervision of the chief of the bureau of homeland security within the military division, with aerial search operations coordinated by the department, division of aeronautics.

(b) Aircraft Registration — Fees.

(1) Private Aircraft. Subject to the limitations of subsections (c) and (d) of this section, every aircraft operating within this state and/or holding a currently valid airworthiness certificate and a currently valid annual inspection or progressive inspection system issued by the appropriate federal agency, shall be registered with the department prior to or during each annual registration year in which the aircraft is operated within this state. The annual registration year shall commence on the date provided by regulation, and the holding of a currently valid airworthiness certificate and a currently valid annual inspection or progressive inspection system issued by the appropriate federal agency shall be considered prima facie evidence that the aircraft is operating within this state. The

department shall charge for each such registration, and for each annual renewal thereof, the fees at the rate of one cent (1¢) per pound of gross weight authorized in the aircraft listing, aircraft specification or type certificate data sheet of said aircraft issued by the federal aviation agency, and in no case to exceed two hundred dollars (\$200) upon any one (1) aircraft, provided that such fee shall be in lieu of all personal property taxes on such aircraft.

Registration certificates shall be kept in the aircraft at all times. In addition to the registration certificate, an identifying decal shall be issued and placed on the left side of the aircraft either upon the vertical stabilizer thereof or upon a window nearest to the rear of the aircraft, fully visible from the outside of the aircraft.

Aircraft shall only be registered prior to or during the current annual registration year. There shall be no registration of aircraft for any registration period which is prior to the current registration year. Registration certificates issued after expiration of the first six (6) months of the current annual registration year, as prescribed by the department, shall be issued at the rate of fifty percent (50%) of the annual fee. Those aircraft that have been found in violation of the provisions of this section after the first six (6) months will pay the full year's fee.

(2) Manufacturers and Dealers License. It shall be unlawful for any person to carry on or conduct the business of buying, selling, or dealing in aircraft unless registered with the department, as such manufacturer or dealer. Any manufacturer or dealer in aircraft owning, having an interest in, or having in his possession an aircraft for the purpose of sale, shall upon the registration and payment of fees as in this act required, acquire one (1) registration certificate which shall bear the distinctive registration number issued to such manufacturer or dealer, and any number of identifying decals. The registration certificate shall be kept at the main office of the manufacturer or dealer and an identifying decal shall be placed upon the left side of every aircraft that the manufacturer or dealer may have an interest in which is held for sale, on the left side thereof either upon the vertical stabilizer or upon a window nearest to the rear of the aircraft.

An identifying decal issued to a manufacturer or dealer during the calendar year for which issued can be transferred from an aircraft no longer in the possession of the dealer or manufacturer for sale or demonstration to one acquired for the purpose of sale or demonstration during the calendar year.

No identifying decal issued to a manufacturer or dealer as herein provided may be transferred to an aircraft owned or in the possession of such manufacturer or dealer when such aircraft is used solely for commercial purposes.

The fee to be paid by a manufacturer or dealer in aircraft shall be forty dollars (\$40.00) for the registration certificate and one dollar (\$1.00) for each identifying decal issued to such manufacturer or dealer.

(c) Requirements for Registration, Issuance of Certificate. Possession of the appropriate effective federal certificate, permit, rating or license relat-

ing to competency of the pilot or ownership and airworthiness of the aircraft, as the case may be, and payment of the fee duly required pursuant to the provisions of this section shall be the only requisites for registration of a pilot or an aircraft under this section. Registration shall be effected by filing with the department a written statement containing the information reasonably required by the department for such purpose. It shall not be necessary for the registrant to provide the department with originals or copies of federal certificates, permits, ratings or licenses. The department may issue certificates of registration, or such other evidences of registration or payment of fees as it may deem proper, and in connection therewith may prescribe requirements for the possession and exhibition of such certificates or other evidences similar to the requirements of section 21-113(b), Idaho Code, for the possession and exhibition of federal airman and aircraft certificates, permits, ratings or licenses. Failure to register, if required, shall be unlawful.

(d) Exemptions. The provisions of this section shall not apply to:

(1) An aircraft owned by, and used exclusively in the service of, any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia, which is not engaged in carrying persons or property for commercial purposes;

(2) An aircraft which is owned by a bona fide nonresident of this state; provided, however, that this exemption shall not apply to such aircraft operated in the transportation of persons or property for hire, in dusting, seeding, or spraying for hire, or in any other activity for hire in this state, whether such aircraft so operated be engaged casually or continuously;

(3) An aircraft engaged principally in commercial airline or air freight flying constituting an act of interstate or foreign commerce while operating under a certificate, permit or license issued by the appropriate agency of the United States government;

(4) An individual piloting an aircraft owned by, and used exclusively in the service of, any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia, which is not engaged in carrying persons or property for commercial purposes;

(5) An individual piloting any aircraft registered under the laws of a foreign country;

(6) A bona fide nonresident of this state piloting aircraft in this state; provided, however, that this exemption shall not apply to any nonresident piloting an aircraft in this state for hire whether such nonresident is so engaged casually or continuously;

(7) An individual piloting an aircraft engaged principally in commercial airline or air freight flying constituting an act of interstate or foreign commerce, while such aircraft is being operated under a certificate, permit or license issued by the appropriate agency of the United States government;

(8) An individual operating model aircraft;

(9) An individual piloting an aircraft which is equipped with fully functioning dual controls when a properly certified pilot is in full charge

of one (1) set of said controls and such flight is solely for instruction or for the demonstration of said aircraft to a bona fide prospective purchaser.

(e) **Transfer of Aircraft.** When the ownership of an aircraft registered under the provisions of this section is transferred, the new owner will be required to register the aircraft under the provisions of this section. If the transferor wishes to register another aircraft he shall pay the registration fee required by this section less the amount of registration fee already paid on the aircraft which was sold, or if the transferor shall have an aircraft to be registered with a useful load less than the aircraft that was sold, he shall pay a transfer fee of one dollar (\$1.00). [1947, ch. 153, § 14, p. 378; am. 1949, ch. 191, § 1, p. 406; am. 1957, ch. 182, § 1, p. 354; am. 1961, ch. 32, § 1, p. 45; am. 1972, ch. 73, § 1, p. 150; am. 1974, ch. 37, § 1, p. 1017; am. 1980, ch. 65, § 1, p. 133; am. 1984, ch. 227, § 1, p. 544; am. 1990, ch. 321, § 1, p. 877; am. 2001, ch. 182, § 1, p. 610; am. 2005, ch. 27, § 1, p. 133.]

STATUTORY NOTES

Cross References. — Bureau of homeland security, § 46-1004.

Military exemption from fees, § 67-2602A.

Revocation or suspension of registration certificates, period of, § 21-121.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 21-102.

RESEARCH REFERENCES

Am. Jur. — 8A Am. Jur. 2d, Aviation, § 29 et seq.

C.J.S. — 2A C.J.S., Aeronautics & Aerospace, § 35 et seq.

21-115. State designation of airports. — (a) Site Approvals and Designations — Regulations — Issuance of Certificates — Fees — Standards — Effective Period — Revocation — Existing Airports. Except as provided in subsection (d)[(c)] of this section, the department is authorized to provide for the approval and designation of airport sites and the issuance of certificates of such approval and designation. No charge shall be made for any such approval and designation, and certificates of such an approval and designation shall be issued without charge to all persons requesting them. Upon the promulgation of a rule or regulation providing for such approval and designation, any municipality or person desiring or planning to construct or establish an airport may, prior to the acquisition of the site or prior to the construction or establishment of the proposed airport, make application to the department for the approval and designation of the site. The department shall with reasonable dispatch grant approval of and designate a site if it is satisfied:

- (1) That such proposed airport will be open to public use;
- (2) That site is adequate for the proposed airport;
- (3) That such proposed airport, if constructed or established, will conform to minimum standards of safety; and
- (4) That safe air traffic patterns could be worked out for such proposed airport and for all existing airports and approved and designated airport sites in its vicinity.

An approval and designation of a site may be granted subject to any reasonable conditions which the department may deem necessary to effectuate the purposes of this section, and shall remain in effect, unless sooner revoked by the department and when such airport site is approved and designated by the department such airport shall be deemed a public use.

The department may, after notice and opportunity for hearing to holders of certificates of an approval and designation, revoke such approval and designation when it shall reasonably determine (1) that there has been an abandonment of the airport site, or (2) that there has been a failure within the time prescribed, or if no time was prescribed, within a reasonable time, to develop the site as an airport or to comply with the conditions of the approval and designation, or (3) that because of a change of physical or legal conditions or circumstances the site is no longer usable for the aeronautical purposes for which the approval and designation was granted, or (4) that such airport has been closed to public use. No approval shall be required for the site of any existing airport. It shall be unlawful for any municipality or person to operate an airport for public use without first obtaining the approval and designation of such airport as required by this section.

(b) **Optional Public Hearings.** In connection with the grant of approval of a proposed airport site or the issuance of an airport license under subsections (a) [and (b)] of this section, the department may, on its own motion or upon the request of an affected or interested person, hold a hearing open to the public as provided in section 21-118 [§ 21-116, Idaho Code].

(c) **Exemptions.** The provisions of this section shall not apply to airports owned or operated by the United States. The department may, from time to time, to the extent necessary, exempt any other class of airports, pursuant to a reasonable classification or grouping, from any rule or regulation, promulgated under this act if it finds that the application of such rule, regulation or requirement would be an undue burden on such class and is not required in the interest of public safety. [1947, ch. 153, § 15, p. 378.]

STATUTORY NOTES

Cross References. — Penal provisions, § 21-121.

Compiler's Notes. — The bracketed letter "c" in the first sentence in subsection (a) was inserted by the compiler. The section as it now stands contains no subsection (d).

In subsection (b), brackets have been placed around "and (b)" by the compiler as it is believed that the reference to subsection (b)

should be deleted and the sole reference be to subsection (a).

The bracketed section designation "§ 21-116, Idaho Code" in subsection (b) was inserted by the compiler since it is thought to be the reference intended.

For words "this act", see Compiler's Notes, § 21-102.

21-116. Investigations and hearings. — (a) **General Power, Accidents, Witnesses, Subpoenas, Court Order.** The department shall have the power to hold investigations, inquiries and hearings concerning matters covered by the provisions of this act and the rules, regulations and orders of the department, and concerning accidents in aeronautics within this state, providing that the appropriate federal agency fails to act at [within] a reasonable time. Hearings shall be open to the public and, except as provided in section 21-120, [Idaho Code,] shall be held upon such call or

notice as the department shall deem advisable. The director or any employee of the department designated by the director to hold any inquiry, investigation or hearing shall have the power to administer oaths and affirmations, certify to all official acts, issue subpoenas, and order the attendance and testimony of witnesses and the production of papers, books, and documents. In case of the failure of any person to comply with any subpoena or order issued under the authority of this section, the department or its authorized representative may invoke the aid of any court of this state of general jurisdiction. The court may thereupon order such person to comply with the requirements of the subpoena or order or to give evidence touching the matter in question. Failure to obey the order of the court may be punished by the court as a contempt thereof.

(b) Use and Limitations on Reports of Investigation. In order to facilitate the making of investigations by the department in the interest of public safety and promotion of aeronautics, the public interest requires, and it is therefore provided, that the reports of investigations or hearings or any part thereof shall not be admitted in evidence or used for any purpose in any suit, action or proceeding growing out of any matter referred to in said investigation, hearing or report thereof, except in case of any suit, action or proceeding, civil or criminal, instituted by or in behalf of the department or in the name of the state under the provisions of this act or other laws of the state relating to aeronautics. [1947, ch. 153, § 16, p. 378.]

STATUTORY NOTES

Compiler's Notes. — The bracketed word "within" in subsection (a) was inserted by the compiler.

The bracketed reference to the Idaho Code in (a) was added by the compiler.

For words "this act", see Compiler's Notes, § 21-102.

RESEARCH REFERENCES

Am. Jur. — 8A Am. Jur. 2d, Aviation, § 12 et seq.

C.J.S. — 2A C.J.S., Aeronautics & Aerospace, § 11 et seq.

21-117. Federal-state joint hearings — Reciprocal services — Accident reporting. — (a) Joint Hearings. The department is authorized to confer with or to hold joint hearings with any agency of the United States in connection with any matter arising under this act, or relating to the sound development of aeronautics.

(b) Reciprocal Services. The department is authorized to avail itself of the cooperation, services, records and facilities of the agencies of the United States as fully as may be practicable in the administration and enforcement of this act. The department shall furnish to the agencies of the United States its cooperation, services, records and facilities, insofar as may be practicable.

(c) Accident Reporting. The department shall report to the appropriate agency of the United States all accidents in aeronautics in this state of which it is informed, and shall insofar as is practicable preserve, protect and prevent the removal of the component parts of any aircraft involved in an

accident being investigated by it until the federal agency institutes an investigation. [1947, ch. 153, § 17, p. 378.]

STATUTORY NOTES

Compiler's Notes. — For words “this act”, see Compiler's Notes, § 21-102.

21-118. Use of state and municipal facilities and services. — In carrying out the provisions of this act the department may use the facilities and services of other agencies of the state and of the municipalities of the state to the utmost extent possible, and such agencies and municipalities are authorized and directed to make available their facilities and services. [1947, ch. 153, § 18, p. 378.]

STATUTORY NOTES

Compiler's Notes. — For words “this act”, see Compiler's Notes, § 21-102.

RESEARCH REFERENCES

Am. Jur. — 8A Am. Jur. 2d, Aviation, § 82 et seq.

21-119. Enforcement of aeronautics laws. — (a) Enforcement Officers. It shall be the duty of the director and employees of the department, and every state and municipal officer charged with the enforcement of state and municipal laws, to enforce and assist in the enforcement of this act and of all rules, regulations and orders issued pursuant thereto and of all other laws of this state relating to aeronautics; and in that connection each of the aforesaid persons is authorized to inspect and examine at reasonable hours any premises, and the buildings and other structures thereon, where airports, air navigation facilities, air schools, or other aeronautical activities are operated or conducted. In aid of the enforcement of this act, the rules, regulations and orders issued pursuant thereto and of all other laws of the state relating to aeronautics, general police powers are hereby conferred upon the director and such of the employees of the department as may be designated by it to exercise such powers.

(b) Court Aid. The department is authorized, in the name of the state, to enforce the provisions of this act and the rules, regulations and orders issued pursuant thereto by injunction or other legal process in the courts of this state. [1947, ch. 153, § 19, p. 378; am. 1974, ch. 12, § 97, p. 61; am. 1992, ch. 149, § 2, p. 447.]

STATUTORY NOTES

Cross References. — Notice by mail, § 60-109A.

Compiler's Notes. — For words “this act”, see Compiler's Notes, § 21-102.

21-120. Department orders — Notice and opportunity for hearings — Judicial review. — Every order of the department requiring performance of certain acts or compliance with certain requirements and any denial or revocation of an approval, certificate or license shall set forth the reasons and shall state the acts to be done or requirements to be met before approval by the department will be given or the approval, license or certificate granted or restored or the order modified or changed. Orders issued by the department pursuant to the provisions of this act shall be served upon the persons affected either by registered mail or in person. In every case where notice and opportunity for hearing are required under the provisions of this act, the order of the department shall, on not less than twenty (20) days' notice, specify a time when and place where the person affected may be heard, or the time within which he may request [a] hearing, and such order shall become effective upon the expiration of the time for exercising such opportunity for hearing, unless a hearing is held or requested within the time provided, in which case the order shall be suspended until the department shall affirm, disaffirm, or modify such order after hearing held or default by the person affected. To the extent practicable, hearings on such orders shall be held in the county where the affected person resides or does business. Any person aggrieved by an order of the department or by the grant, denial or revocation of any approval, license or certificate may have the action of the department reviewed by the district court of the county in which the aggrieved person resides or has his principal place of business. [1947, ch. 153, § 20, p. 378.]

STATUTORY NOTES

Cross References. — Notice by mail, § 60-109A.

The bracketed insertion in the third sentence was added by the compiler.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 21-102.

21-121. Penalties — General and special. — (a) General. Any person violating any of the provisions of this act, or any of the rules, regulations or orders issued pursuant thereto, shall be guilty of a misdemeanor.

(b) Special. For any violation of section 21-112, [Idaho Code,] in addition to, or in lieu of, the penalties provided by subsection (a) of this section, or as a condition to the suspension of a sentence which may be imposed pursuant thereto, the court in its discretion may revoke or suspend the violator's registration certificates for such period as it may determine but not to exceed one (1) year. Violation of the duly imposed prohibition of the court may be treated as a separate offense under this section or as a contempt of court. Upon a plea of guilty or conviction under section 21-112[, Idaho Code,] in any case involving a registrant under section 21-114[, Idaho Code], the court shall cause a notation of such plea or conviction and of the sentence imposed to be marked upon the pilot certificate or other evidence of pilot registration or receipt provided by the department under said section 21-114[, Idaho Code]. In no event shall this subsection be construed as warrant for the court or any other agency or person to take away, impound, hold or mark any federal airman or aircraft certificate, permit, rating or

license, or to take away, impound or hold any state registration certificate or other evidence of such registration or payment of fees. [1947, ch. 153, § 21, p. 378.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 21-102.

The bracketed insertions in this section were added by the compiler.

JUDICIAL DECISIONS

Cited in: *Andrea v. City of Coeur d'Alene*, 132 Idaho 188, 968 P.2d 1097 (Ct. App. 1998).

RESEARCH REFERENCES

Am. Jur. — 8A Am. Jur. 2d, Aviation, §§ 107 et seq., 208 et seq.

C.J.S. — 2A C.J.S., Aeronautics & Aerospace, § 270 et seq.

21-122. Exchange of violations information. — The department is authorized to report to the appropriate federal agencies and agencies of other states all proceedings instituted charging violation of sections 21-112 and 21-113[, Idaho Code,] and all penalties, of which it has knowledge, imposed upon airmen or the owners or operators of aircraft for violations of the rules, regulations or orders of the department. The department is authorized to receive reports of penalties and other data from agencies of the federal government and other states and, when necessary, to enter into agreements with federal agencies and the agencies of other states governing the delivery, receipt, exchange, and use of reports and data. The department may make the reports and data of the federal agencies, the agencies of other states, and the courts of this state available, with or without request therefor, to any and all courts of this state, and to any officer of the state or of a municipality authorized pursuant to section 21-119[, Idaho Code,] to enforce the aeronautics laws. [1947, ch. 153, § 22, p. 378.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions in this section were added by the compiler.

21-123. Separability. — If any provision of this act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions of [or] application of this act which can be given effect without the invalid provisions or applications, and to this end the provisions of this act are declared to be severable. [1947, ch. 153, § 23, p. 378.]

STATUTORY NOTES

Compiler's Notes. — The bracketed word "or" was inserted by the compiler.

For words "this act", see Compiler's Notes, § 21-102.

Section 24 of S.L. 1947, ch. 153 provided as follows: "All acts or parts of acts inconsistent with the provisions of this act are hereby repealed, and section 21-205 of the Idaho

Code Annotated [1932], as amended by chapter 203, Session Laws of 1933, and as amended by chapter 166, Session Laws of 1941, is hereby repealed."

21-124. Short title. — This act may be cited as the "Uniform State Aeronautics Department Act." [1947, ch. 153, § 25, p. 378.]

STATUTORY NOTES

Compiler's Notes. — The revision by S.L. 1974, ch. 12, § 95, transferred the duties of the state department of aeronautics to the Idaho transportation department and Idaho

transportation board. See §§ 21-146 to 21-148.

For words "this act", see Compiler's Notes, § 21-102.

21-125 — 21-130. [Reserved.]

21-131. Short title. — This act shall be known and cited as the "Aeronautical Administration Act of 1970." [1970, ch. 257, § 1, p. 683.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1970, ch. 257, compiled as §§ 21-

131, 21-132, 21-135 to 21-138, 21-142, and 21-146 to 21-150.

21-132. Declaration of purpose. — It is hereby found and declared that there exists in the state of Idaho a need to improve and expand air service capabilities to meet the increased demands of air transportation. In view of the rapid growth of this mode of passenger transportation, faster and heavier aircraft, the anticipated use of this system by industry for moving high value goods and merchandise in a minimum of time, to save handling and warehousing, planning to meet future needs is imperative. Such planning must accommodate intrastate and interstate service for passengers and freight into the national system, with implementation as rapidly as possible. The efforts of both the public and private sectors must be combined to match the aviation program planned by congress for the new millennium. [1970, ch. 257, § 2, p. 683; am. 1974, ch. 12, § 98, p. 61; am. 2001, ch. 377, § 1, p. 1319.]

21-133. Department of Aeronautics. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1970, ch. 257, § 3, p. 683, was repealed by S.L. 1974, ch. 12, § 1, p. 61.

21-134. Idaho aeronautics advisory board created — Duties — Compensation. — There is hereby created and established the Idaho aeronautics advisory board. The board shall consult with and advise the Idaho transportation department on matters concerning aeronautics. Members shall be compensated as provided by section 59-509(h), Idaho Code.

[I.C., § 21-134, as added by 1974, ch. 12, § 99, p. 61; am. 1980, ch. 247, § 7, p. 582; am 1982, ch. 95, § 131, p. 185; am. 1989, ch. 228, § 1, p. 543; am. 1994, ch. 128, § 1, p. 286; am. 2001, ch. 377, § 2, p. 1319.]

STATUTORY NOTES

Prior Laws. — Former § 21-134, which comprised S.L. 1970, ch. 257, § 4, p. 683, was repealed by S.L. 1974, ch. 12, § 1, p. 61.

21-135. Composition of advisory board — Number — Appointment — Qualifications. — The advisory board shall be composed of five (5) members to be appointed by the governor. All members shall be knowledgeable and have experience in aviation; provided however, one (1) member shall have particular knowledge of commercial aviation; one (1) member shall have knowledge of general aviation; one (1) member shall have particular knowledge of back-country aviation; and one (1) member shall have particular knowledge of air freight transportation. Not more than three (3) members thereof shall at any time belong to the same political party. Provided, however, two (2) members of the advisory board shall be licensed pilots. Members shall be successful public spirited citizens of good character, well informed and interested in the construction and maintenance of aeronautical facilities. Selection and appointment shall be made solely with regard to the best interests of the various functions of the advisory board. Each member at the time of his appointment shall be a citizen and resident taxpayer of the state of Idaho, and of the members appointed to represent director districts, such member shall be a resident of the district from which he is appointed for at least three (3) years. [1970, ch. 257, § 5, p. 683; am. 1974, ch. 12, § 100, p. 61; am. 1993, ch. 274, § 1, p. 926; am. 2001, ch. 377, § 3, p. 1319.]

21-136. Appointment of members — Term — Vacancies. — For the purposes of selection of members of the advisory board of aeronautics, one (1) member shall be appointed to represent director districts no. 1 and 2, one (1) member to represent director districts no. 3 and 4, one (1) member to represent director districts no. 5 and 6, as provided in section 40-303, Idaho Code, and two (2) members shall be appointed from the state at-large.

The governor shall appoint, subject to confirmation by the senate, the board members for terms of five (5) years. The initial terms of the at-large members may be less than five (5) years, and shall be staggered so that not more than (1) term of any member of the board shall expire in any one (1) year. The term of each member shall begin immediately upon his appointment and qualification. Each member shall hold office after the expiration of his term until his successor has been appointed. Not less than fifteen (15) days before the expiration of the term of appointment of each member, the governor shall appoint a successor and submit the appointment to the senate for confirmation. Should any member of the board resign, die, remove from the district from which he was appointed, or otherwise be removed from office, a vacancy shall exist, and during the recess of the legislature, the governor shall within thirty (30) days appoint a successor with like qualifications, to serve for the

remainder of the retiring member's unexpired term. If a vacancy occurs within forty-five (45) days after the convening of the legislature and while it is still in session, the governor shall make and submit to the senate for its approval a nomination to fill the vacancy. [1970, ch. 257, § 6, p. 683; am. 1974, ch. 12, § 101, p. 61; am. 1985, ch. 253, § 3, p. 586; am. 1989, ch. 228, § 2, p. 543; am. 1996, ch. 35, § 1, p. 88; am. 2001, ch. 377, § 4, p. 1319.]

21-137. Certificates of members — Oath — Political affiliation — Bond. — Each member of the board shall receive a certificate of appointment from the governor, and before entering upon the discharge of his official duties, shall file with the secretary of state the constitutional oath of office, to which and as a part thereof shall be added a declaration of the political party to which said board member belongs. Each member shall be bonded in the time, form and manner prescribed in chapter 8, title 59, Idaho Code. [1970, ch. 257, § 7, p. 683.]

21-138. Members serve at pleasure of governor. — Members shall serve at the pleasure of the governor. [1970, ch. 257, § 8, p. 683.]

21-139 — 21-141. Board of aeronautical directors — Compensation — Election — Terms. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, p. 683, were repealed by S.L. 1974, ch. 12, which comprised S.L. 1970, ch. 257, §§ 9-11, § 1, p. 61.

21-142. Powers and duties of board. — The Idaho transportation board shall be vested with the functions, powers and duties relating to the provisions of this act and shall have power to:

(1) Contract in the name of the state with respect to the rights, powers and duties vested in the board by this act.

(2) Locate, design, construct, reconstruct, alter, extend, repair and maintain state aeronautical facilities when determined by the board to be in the public interest.

(3) Establish standards for the location, design, construction, reconstruction, alteration, extension, repair and maintenance of state aeronautical facilities.

(4) Make annually on or before the first day of December of each year, and at such other times as the governor may require, reports in writing to the governor concerning the condition, management and financial transactions of the transportation department.

(5) Purchase, condemn or otherwise acquire, and exchange any real property, either in fee or in any lesser estate or interest, rights-of-way, easements and other rights together with rights of direct access from the property abutting aeronautical facilities, deemed necessary by the board for present or future aeronautical purposes. The order of the board that the land sought is necessary for such use shall be prima facie evidence of such fact.

(6) Cooperate with, receive and expend grants from the federal government, and receive and expend gifts and grants from other sources for the construction and improvement of any aeronautical facility and, when authorized or directed by any act of congress or any rule or regulation of any agency of the federal government, expend funds so donated or granted.

(7) Contract jointly with counties, municipalities and other public agencies for the improvement and construction of aeronautical facilities.

(8) Expend funds for the construction, maintenance and improvement of publicly owned aeronautical facilities.

(9) Prescribe rules and regulations affecting aeronautical facilities, and enforce compliance therewith.

(10) Cooperate financially or otherwise with any other state, county or city of any other state, or with any foreign country or any province or district of any foreign country, or with the government of the United States, or any agency thereof, or private agencies or persons, or with any or all thereof for the erecting, construction, reconstructing, and maintaining of any aeronautical facility between the state of Idaho and any other state or foreign country, and for the purchase or condemnation or other acquisition of right-of-way therefor.

(11) Close or restrict the use of any state aeronautical facility whenever such closing or restricting of use is deemed necessary.

(12) Establish such departmental divisions as are necessary for the full and efficient administration of this act.

(13) Employ such personnel as are necessary subject to the provisions of the public employees retirement system (chapter 13, title 59, Idaho Code), group insurance plan (chapter 12, title 59, Idaho Code), or personnel system (chapter 53, title 67, Idaho Code).

(14) Sell, exchange, or otherwise dispose of and convey, in accordance with law, any real or personal property, other than public lands which by the constitution and laws of the state of Idaho are placed under the jurisdiction of the state land board, or parts thereof, together with appurtenances, when in the opinion of the board, said real property and/or appurtenances are no longer needed for state aeronautical purposes, and also dispose of any surplus materials and by-products from such property and appurtenances.

(15) Establish rules and regulations, consistent with the laws of Idaho, for the expenditure of all moneys appropriated and/or allotted by law to the Idaho transportation department or the board.

(16) Exercise such other powers and duties, including the adoption of bylaws, rules and regulations, necessary to fully implement and carry out the provisions of this act and the provisions of title 21, Idaho Code, not inconsistent herewith. [1970, ch. 257, § 12, p. 683; am. 1974, ch. 12, § 102, p. 61.]

STATUTORY NOTES

Cross References. — “Board”, § 21-134.

Compiler’s Notes. — For words “this act”, see Compiler’s Notes, § 21-131.

21-143 — 21-145. State director of aeronautics — Oath — Bond — Functions. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, p. 683, were repealed by S.L. 1974, ch. 12, which comprised S.L. 1970, ch. 257, §§ 13-15, § 1, p. 61.

21-146. Funds, appropriations and other moneys for the department of aeronautics transferred to control of Idaho transportation board. — All funds, appropriations and other moneys from whatever source, now or hereafter appropriated and/or provided by law for the administration of the functions, powers and duties of the department of aeronautics and/or the board including those of the state aeronautics fund, shall be and the same hereby are, respectively, transferred, made available to and placed under the control of the Idaho transportation board and appropriated for expenditure by it and shall be paid out by the state treasurer in the manner provided by the constitution and the laws of the state of Idaho. The said "state aeronautics fund" shall be in all respects the same "state aeronautics fund" as hereafter provided by law, and which said fund shall be and remain in full force and effect. [1970, ch. 257, § 16, p. 683; am. 1974, ch. 12, § 103, p. 61.]

STATUTORY NOTES

Cross References. — State aeronautics fund, § 21-211.

21-147. Continuation of existing statutes — Effect. — The statutes of the state of Idaho now governing the administration, construction, maintenance, development and regulation of aeronautical facilities within the state, except where the same conflict with or are superseded by this act, shall continue with full force and effect, except that wherever the words "department of aeronautics," "Idaho board of aeronautical directors," "director of aeronautics" and the "state director of aeronautics" are used in the statutes of the state with respect to the administration, construction, maintenance, development and regulation of aeronautical facilities, the same shall be read and construed to mean, respectively, the "Idaho transportation board" and/or the "director of the Idaho transportation department," as the case may be. The Idaho transportation board shall be the successor in law to all contractual obligations entered into by its predecessors in law. [1970, ch. 257, § 17, p. 683; am. 1974, ch. 12, § 104, p. 61.]

STATUTORY NOTES

Cross References. — Idaho transportation board, § 40-301 et seq.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 21-131.

Effective Dates. — Section 124 of S.L. 1974, ch. 12 provided the act should take effect on and after July 1, 1974.

21-148. Continuation of rights and privileges of present employees — Effect. — Nothing herein contained shall affect the rights or privileges of employees of the present department of aeronautics under the public employees retirement system (chapter 13, title 59, Idaho Code), group insurance plan (chapter 12, title 59, Idaho Code), or personnel system (chapter 53, title 67, Idaho Code). [1970, ch. 257, § 18, p. 683.]

21-149. Conflicts with other laws. — Whenever any provisions of the existing laws of the state or of any laws enacted at the fortieth session [1969, 1970] of the Idaho legislature, are in conflict with the provisions of this act, it is the declared intention of the legislature that the provisions of this act shall control and supersede all such laws. [1970, ch. 257, § 19, p. 683.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 21-131.

Section 20 of S.L. 1970, ch. 257 read: "This act shall not affect any act done, ratified or confirmed, or any right accrued, or established or any action or proceeding had or commenced in a civil or criminal cause prior

to the effective date of this act, but such actions or proceedings may be prosecuted and continued by the department of aeronautics, and, when required, by the Idaho board of aeronautical directors and/or the state aeronautics director, as the case may be."

21-150. Violations — Penalty. — Any person who shall violate or aid in the violation of any of the provisions of this act, unless a different penalty be prescribed by law, shall be guilty of a misdemeanor and upon conviction thereof be punished by a fine of not more than three hundred dollars (\$300) or imprisonment for a period not to exceed ninety (90) days or both such fine and imprisonment in the discretion of the court, and all fines collected for violation of this act shall be paid ten percent (10%) into the state's general fund and ninety percent (90%) into the state aeronautics fund. [1970, ch. 257, § 21, p. 683.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 21-131.

Section 23 of S.L. 1970, ch. 257 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for

any reason, such declaration shall not affect the validity of remaining portions of this act."

Effective Dates. — Section 24 of S.L. 1970, ch. 257 provided that the act should be in full force and effect on and after July 1, 1970.

CHAPTER 2

STATE LAW FOR AERONAUTICS

SECTION.

- 21-201. Definition of terms.
- 21-202. Sovereignty in space.
- 21-203. Ownership of space.
- 21-204. Lawfulness of flight.
- 21-205. Damage on land.

SECTION.

- 21-206. Collision of aircraft.
- 21-207. Jurisdiction over crimes and torts.
- 21-208. Jurisdiction over contracts.
- 21-209. Uniformity of interpretation.
- 21-210. Short title.

SECTION.

21-211. Proceeds of licenses and fines —
State aeronautics fund.

SECTION.

21-212. [Unconstitutional.]

21-201. Definition of terms. — a. The term “aircraft” means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment.

b. The term “airman” means any individual (including the person in command, and any pilot, mechanic or member of the crew) who engages in the navigation of aircraft while under way, and any individual who is in charge of the inspection, overhauling or repairing of aircraft.

c. The term “passenger” includes any person riding in an aircraft, but having no part in its operation. [1931, ch. 100, § 1, p. 178; I.C.A., § 21-101.]

STATUTORY NOTES

Cross References. — Aeronautical Administration Act of 1970, §§ 21-131 — 21-150.

Tax on aircraft fuels, §§ 63-2405, 63-2408.

Compiler's Notes. — Former Uniform

State Law for Aeronautics (S.L. 1925, ch. 92) was repealed by S.L. 1931, ch. 41.

The words enclosed in parentheses so appeared in the law as enacted.

RESEARCH REFERENCES

Am. Jur. — 8A Am. Jur. 2d, Aviation, § 1.

C.J.S. — 2A C.J.S., Aeronautics & Aerospace, § 4.

21-202. Sovereignty in space. — Sovereignty in space above the lands and waters of this state is declared to rest in the state, except where granted to and assumed by the United States pursuant to a constitutional grant from the people of this state. [1931, ch. 100, § 2, p. 178; I.C.A., § 21-102.]

RESEARCH REFERENCES

Am. Jur. — 8A Am. Jur. 2d, Aviation, § 2.

C.J.S. — 2A C.J.S., Aeronautics & Aerospace, § 1.

21-203. Ownership of space. — The ownership of the space above the lands and waters of this state is declared to be vested in the several owners of the surface beneath, subject to the right of flight described in section 21-204. [1931, ch. 100, § 3, p. 178; I.C.A., § 21-103.]

JUDICIAL DECISIONS

Cited in: Caldwell v. Roark, 92 Idaho 99, 437 P.2d 615 (1968).

RESEARCH REFERENCES

Am. Jur. — 8A Am. Jur. 2d, Aviation, § 2.

C.J.S. — 2A C.J.S., Aeronautics & Aerospace, § 2.

21-204. Lawfulness of flight. — Flight in aircraft over the lands and waters of this state is lawful, unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water, is put by the owner, or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water beneath. The landing of an aircraft on the lands or waters of another, without his consent, is unlawful except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft and/or the airman shall be liable, as provided in section 21-205[, Idaho Code]. [1931, ch. 100, § 4, p. 178; I.C.A., § 21-104.]

STATUTORY NOTES

Cross References. — Hunting from airplanes a misdemeanor, § 36-1101.

Compiler's Notes. — The bracketed insertion was added by the compiler.

JUDICIAL DECISIONS

ANALYSIS

Construction.

Valuation in condemnation proceeding.

Construction.

It is necessary to read these statutes concerning sovereignty in, ownership of and flight in aircraft over lands and waters of this state with congressional enactments under the commerce clause of the United States Constitution. *Roark v. City of Caldwell*, 87 Idaho 557, 394 P.2d 641 (1964).

Valuation in Condemnation Proceeding.

The owner of land taken by condemnation

for use of an adjacent airport was entitled to a valuation not reduced by the effect of planes flying low over the land in taking off and landing on the adjacent airport, but it was proper for the jury to consider the effects of any concentration of high flying aircraft occasioned by the presence of the airport adjacent to the property. *Caldwell v. Roark*, 92 Idaho 99, 437 P.2d 615 (1968).

RESEARCH REFERENCES

Am. Jur. — 8A Am. Jur. 2d, Aviation, § 3 et seq.

C.J.S. — 2A C.J.S., Aeronautics & Aerospace, § 8 et seq.

A.L.R. — Airport operations or flight of aircraft as taking or damaging of property. 22 A.L.R.4th 863.

21-205. Damage on land. — The owner or the operator, or either of them, of every aircraft which is operated over the lands or waters of this state shall be liable for injuries or damages to persons or property on or over the land or water beneath, caused by the ascent, descent or flight of aircraft, or the dropping or falling of any object therefrom, in accordance with the rules of law applicable to torts on land in this state. If the aircraft is leased at the time of the injury to person or property, both owner and lessee shall be thus liable, and they may be sued jointly, or either or both of them may

be sued separately. The injured person, or owner or bailee of the injured property, shall have a lien on the aircraft causing the injury to the extent of the actionable damage caused by the aircraft or objects falling from it. [1931, ch. 100, § 5, p. 178; I.C.A., § 21-105.]

JUDICIAL DECISIONS

Compensatory Damages.

In an action to recover compensatory damages for injury to pea crop and to foreclose a claimed lien on an airplane brought by landowner against crop duster where weed-killing spray drifted onto plaintiff's land while defendant was spraying adjacent land, upon plaintiff failing to prove actual damage or any

criterion or guide by which damages could be determined, trial court properly sustained motion for nonsuit and entered judgment of dismissal, plaintiff failing, when motion for nonsuit was made, to contend he was entitled to nominal damages. *Alm v. Johnson*, 75 Idaho 521, 275 P.2d 959 (1954).

RESEARCH REFERENCES

Am. Jur. — 8A Am. Jur. 2d, Aviation, § 9.

C.J.S. — 2A C.J.S., Aeronautics & Aerospace, § 128 et seq.

21-206. Collision of aircraft. — The liability of the owner of one aircraft to the owner of another aircraft, or to airmen or passengers on either aircraft, for damage caused by collision on land or in the air, shall be determined by the rules of law applicable to torts on land. [1931, ch. 100, § 6, p. 178; I.C.A., § 21-106.]

RESEARCH REFERENCES

Am. Jur. — 8A Am. Jur. 2d, Aviation, § 158 et seq.

C.J.S. — 2A C.J.S., Aeronautics & Aerospace, § 134.

21-207. Jurisdiction over crimes and torts. — All crimes, torts and other wrongs committed by or against an airman or passenger while in flight over this state shall be governed by the laws of this state; and the question whether damage occasioned by or to an aircraft while in flight over this state constitutes a tort, crime or other wrong by or against the owner of such aircraft, shall be determined by the laws of this state, so far as not governed by federal laws at any time. [1931, ch. 100, § 7, p. 178; I.C.A., § 21-107.]

JUDICIAL DECISIONS

Purpose.

The purpose of this section was to assure that this state would have jurisdiction to punish wrongdoing where no other state did,

due to the fact that the crime or tort was not committed within the territorial boundaries of any other jurisdiction. *Johnson v. Pischke*, 108 Idaho 397, 700 P.2d 19 (1985).

21-208. Jurisdiction over contracts. — All contractual and other legal relations entered into by airmen or passengers while in flight over this state shall have the same effect as if entered into on the land or water beneath. [1931, ch. 100, § 8, p. 178; I.C.A., § 21-108.]

RESEARCH REFERENCES

C.J.S. — 2A C.J.S., Aeronautics & Aerospace, § 208 et seq.

21-209. Uniformity of interpretation. — This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, and to harmonize, as far as possible, with the United States Air Commerce Act of 1926, the regulations thereunder and other federal laws and regulations on the subject of aeronautics. [1931, ch. 100, § 9, p. 178; I.C.A., § 21-109.]

STATUTORY NOTES

Federal References. — The United States Air Commerce Act, referred to in this section, was repealed by Act of Aug. 23, 1958, P.L. 85-726, Title XIV, § 1401 (a), 72 Stat. 806. The present, comparable law may be found in 49 U.S.C. § 40101 et seq.

Compiler's Notes. — The words "this act" refer to S.L. 1931, ch. 100, §§ 1 to 10, compiled as §§ 21-201 to 21-210.

21-210. Short title. — This act shall be known and cited as the Uniform State Law for Aeronautics. [1931, ch. 100, § 10, p. 178; I.C.A., § 21-110.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 21-209.

21-211. Proceeds of licenses and fines — State aeronautics fund. — All moneys collected for the licensing of aircraft and airmen, all fines and penalties paid under the provisions of laws relating to or regulating the operation, registration or licensing of aircraft or pilots, air safety or air flight not otherwise appropriated and such other funds as may be paid into the state aeronautics fund shall be paid to the state treasurer, and shall be placed by him in the state aeronautics fund, which is hereby created, and all of said state aeronautics fund is hereby appropriated for the purpose of furthering the administration, development and enforcement of laws relating to aviation and for defraying administrative expenses of the Idaho transportation department, including per diem compensation of the Idaho transportation board, and the salary of the director of the department. Interest earned on the investment of idle moneys in the state aeronautics fund shall be paid to the state aeronautics fund. [I.C., § 21-211, as added by 1957, ch. 150, § 2, p. 249; am. 1973, ch. 163, § 1, p. 310; am. 1974, ch. 12, § 105, p. 61; am. 2001, ch. 94, § 1, p. 242.]

STATUTORY NOTES

Effective Dates. — Section 2 (3) of S.L. 1957, ch. 150 declared an emergency. Approved March 7, 1957.

Section 2 of S.L. 1973, ch. 163 declared an emergency. Approved March 17, 1973.
Section 124 of S.L. 1974, ch. 12 provided the

act should take effect on and after July 1, 1974.

21-212. Guest statute. [Unconstitutional.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1965, ch. 58, § 1, p. 94, was declared unconstitutional by the Idaho supreme court in *Messmer v. Ker*, 96 Idaho 75, 524 P.2d 536 (1974).

JUDICIAL DECISIONS

Constitutionality.
As there is no good justification for the airplane guest statute and as it violates equal protection guarantees, it is, therefore, unconstitutional. *Messmer v. Ker*, 96 Idaho 75, 524 P.2d 536 (1974).

CHAPTER 3

IDAHO AIR COMMERCE ACT OF 1929

SECTION.

21-301 — 21-309. [Repealed.]

21-301 — 21-309. Air Commerce Act of 1929. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised S.L. 1929, ch. 137, §§ 1, 2, 2A, 3, 5-9; am. 1931, ch. 132, § 1, p. 229; am. 1931, ch. 145, §§ 1, 2, p. 244; I.C.A., §§ 21-201 — 21-204, 21-206 — 21-210, were repealed by S.L. 1957, ch. 150, § 1, p. 249.

CHAPTER 4

AIR NAVIGATION FACILITIES

SECTION.

21-401. Authority to provide facilities — Expense — Issuance of bonds — Duties of commissioners and councilmen — Restriction on lease of facilities.

21-402. [Repealed.]

SECTION.

21-403. Counties and municipalities may share in cost of airports.

21-404. Tax levy authorized.

21-405. Cooperative agreements for division of costs.

21-406. Funds to carry out contracts.

21-401. Authority to provide facilities — Expense — Issuance of bonds — Duties of commissioners and councilmen — Restriction on lease of facilities. — Counties, highway districts and cities are hereby authorized to acquire by purchase, lease, condemnation, or otherwise, take over and hold lands either wholly or partly within or without the boundaries or corporate limits of such counties, highway districts or cities, or wholly or partly within or without the state of Idaho, for the purpose of constructing and maintaining aviation fields, airports, hangars and other air navigation facilities; to provide equipment necessary or incidental to the maintenance and operation of such aviation fields or airports; to maintain, operate and manage such aviation fields, airports and grounds and prescribe rules and

regulations for the maintenance, operation and management thereof, and fix fees and rentals to be charged for the use of the same or any part thereof; to survey, plat, map, grade, ornament and otherwise improve such lands and all appurtenances thereto, whether owned and operated or owned or leased by such counties, highway districts or cities, and all approaches and avenues leading to or adjacent thereto; to lease for aviation purposes or for any purposes connected therewith and incidental thereto and for such commercial purposes as the governing bodies of such counties, highway districts and cities may determine upon all or any part of the land or lands so required, under such regulations and upon such terms and conditions as shall be established by such governing bodies, and not subject to the limitation as to length of term prescribed in section 31-836, Idaho Code; to construct, operate and maintain hangars, buildings and equipment necessary or convenient to the maintenance and operation of aviation fields or airports.

Counties, highway districts and cities are hereby empowered to provide for all costs and expenses necessary or incident to the exercise of the foregoing powers or the attainment of the foregoing objects or any of them, out of the general funds or out of any of the funds made available for such purposes, of such counties, highway districts and cities, or to issue bonds pursuant to law for the payment of any or all of such costs and expenses except for the maintenance and operation of such aviation fields or airports; provided, that no bonds shall be issued for the purposes aforesaid unless and until authorized by a vote of two-thirds (2/3) of the qualified electors of the county, highway district or municipality, voting at such election held subject to the provisions of section 34-106, Idaho Code. Nothing contained in this chapter shall be construed to increase the maximum of any tax levies for counties, highway districts or cities.

The boards of county commissioners of their respective counties, the highway commissioners of their respective highway districts and the councilmen of their respective cities, shall have jurisdiction and power under such limitations and restrictions as are prescribed by law to carry into full force and effect all of the provisions of this law.

Such aviation fields or airports shall in no case be leased to any person, association or corporation under such terms or conditions as to give such person, association or corporation, the exclusive right to the use of such aviation fields or airports. [1929, ch. 106, § 1, p. 172; I.C.A., § 21-301; am. 1937, ch. 59, § 1, p. 79; am. 1951, ch. 54, § 1, p. 77; am. 1963, ch. 45, § 1, p. 194; am. 1971, ch. 88, § 1, p. 189; am. 1995, ch. 118, § 1, p. 417; am. 2005, ch. 203, § 1, p. 613.]

STATUTORY NOTES

Cross References. — Aeronautical Administration Act of 1970, § 21-131 et seq.

Issuance of bonds by municipal corporations for the purchase, improvement and equipment of air navigation facilities authorized, § 50-1019.

Tax on aircraft engine fuels, §§ 63-2405, 63-2408.

Effective Dates. — Section 2 of S.L. 1963, ch. 45 declared an emergency. Approved February 27, 1963.

Section 2 of S.L. 1971, ch. 88 declared an emergency. Approved March 8, 1971.

JUDICIAL DECISIONS

Expenses.

The mere fact that the lease agreement under which successful bidder would purchase unimproved land from city, construct an air terminal building thereon, and lease it back to the city was authorized by the general laws of the state does not ipso facto bring the expenditure for the operation of an airport within the proviso clause of Const., Art. VIII, § 3. *City of Pocatello v. Peterson*, 93 Idaho 774, 473 P.2d 644 (1970).

Where city had operated a municipal airport for the benefit of the traveling public for more than 20 years but found such airport

inadequate to serve the public, payments on lease agreement under which successful bidder would buy unimproved land from city and construct an air terminal building thereon and lease the completed structure on the purchased land back to the city were ordinary and necessary expenses falling within the proviso to Const., Art. VIII, § 3. *City of Pocatello v. Peterson*, 93 Idaho 774, 473 P.2d 644 (1970).

Cited in: *Caldwell v. Roark*, 92 Idaho 99, 437 P.2d 615 (1968).

RESEARCH REFERENCES

Am. Jur. — 8A Am. Jur. 2d, Aviation, § 82 et seq.

21-402. Application limited. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1929, ch. 106, § 2, p. 172; I.C.A., § 21-302, was repealed by S.L. 1965, ch. 23, § 1.

21-403. Counties and municipalities may share in cost of airports. — Recognizing the need for airports as part of the national defense system and the inability of one (1) municipality or one (1) county to finance the cost of such construction and maintenance thereof within its own limits or boundaries, it is the intent and purpose of this act to enable them to jointly and severally enter into contracts or agreements and share in the cost of such construction and maintenance. [1941, ch. 103, § 1, p. 184.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1941, ch. 103, compiled as §§ 21-403 to 21-406.

21-404. Tax levy authorized. — Any county or municipality may levy on all of the taxable property of said county or said municipality, for the purpose of building and maintaining an airport either within or without the boundaries of such county or municipality, a tax not to exceed four hundredths percent (.04%) of market value for assessment purposes, on all taxable property within such county or such municipality, provided, however, that this section does not constitute a limitation upon the powers of cities as provided in section 50-321, Idaho Code. [1941, ch. 103, § 2, p. 184; am. 1965, ch. 147, § 1, p. 286; am. 1995, ch. 82, § 1, p. 218.]

STATUTORY NOTES

Compiler's Notes. — The words "of the first class" which followed the word "cities" in S.L. 1941, ch. 103, § 2 as enacted, have been deleted for the reason that former title 50 has been repealed by S.L. 1967, ch. 429, § 472 and under the new title 50, cities are no longer divided into classes.

Section "50-321" has been substituted for

"50-131" which appeared in S.L. 1941, ch. 103, § 2 as enacted, for the reason that section 51-131 has been repealed by the above act and section 50-321 now contains the same subject matter.

Effective Dates. — Section 2 of S.L. 1965, ch. 147 declared an emergency. Approved March 17, 1965.

21-405. Cooperative agreements for division of costs. — Any county may enter into agreements with other contiguous counties or with any municipality within or without said county, and any municipality may enter into agreements with other municipalities either within or without the county wherein said municipality is located; or with any county or counties within, this state, for the purpose of the construction and maintenance of airports and for a division of the costs of such construction and maintenance and for the location of such airports and facilities connected therewith. Any county or municipality may enter into agreements with the federal government, or any of its agencies, for assistance and cooperation in the construction and maintenance of any airports and providing for the transfer of airports so constructed, to the federal government or the state of Idaho for the consideration of perpetual maintenance of said airports. [1941, ch. 103, § 3, p. 184.]

STATUTORY NOTES

Cross References. — Cooperative or joint contracts with other governmental units, § 67-2332.

21-406. Funds to carry out contracts. — For the purpose of carrying out the terms of any contract or agreement entered into pursuant to the provisions of this act, such municipality or county may use any funds at its disposal, not otherwise appropriated. [1941, ch. 103, § 4, p. 184.]

STATUTORY NOTES

Compiler's Notes. — This section also contained a provision as follows: "and during the years 1941 and 1942, such municipalities and counties shall have the right to make such expenditures though not included and provided for in the annual appropriation bill

or budget of such municipality or county."

For words "this act", see Compiler's Notes, § 21-403.

Effective Dates. — Section 5 of S.L. 1941, ch. 103 declared an emergency. Approved March 7, 1941.

CHAPTER 5

AIRPORT ZONING ACT

SECTION.

21-501. Definitions.

21-502. Aviation hazards contrary to public interest.

SECTION.

21-503. Airport zoning regulations.

21-504. Procedure for zoning an aviation hazard area.

SECTION.

- 21-505. Airport zoning requirements.
- 21-505A. Permits and variances — Marking and lighting.
- 21-505B. Relation to comprehensive zoning regulations.
- 21-506. Judicial review.
- 21-507. Enforcement and remedies.
- 21-508. Acquisition of air rights.
- 21-509. Separability.
- 21-510. Short title.
- 21-511. State land adjacent to public airport — Notice of intention to sell or lease.

SECTION.

- 21-512. Authority to sell or lease.
- 21-513. Declaration of policy.
- 21-514. Definition of terms.
- 21-515. Marking of hazards to air flight.
- 21-516. Determination of hazards.
- 21-517. Procedure for determination of hazards.
- 21-518. Judicial review.
- 21-519. Rules and regulations.
- 21-520. Violation of act, penalties, injunction.

21-501. Definitions. — Definitions as used in this chapter, unless the context otherwise requires:

(1) “Airport” means any area of land or water which is used, or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon. The term “airport” shall include such other common terms as aviation field, airfield, intermediate landing field, landing field, landing area, airstrip, and landing strip. For the purposes of this chapter, the term “airport” refers to a publicly owned and managed facility that is open for public use without operational restrictions on its use.

(2) “Aviation hazard” means any new or existing structure, object of natural growth, use of land, or modification thereto, which endangers the lives and property of users of an airport, or of occupants of land in its vicinity, and that reduces the size of the area available for landing, taking off and maneuvering of aircraft, or extends up into the airspace between airports to cause disastrous and needless loss of life and property.

(3) “Aviation hazard area” means any area of land or water upon which an aviation hazard might be established if not prevented as provided in this chapter.

(4) “Political subdivision” means any municipality, city or county.

(5) “Person” means any individual, firm, copartnership, corporation, company, association, joint stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

(6) “Structure” means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

(7) “Tree” means any object of natural growth.

(8) “State” or “this state” means the state of Idaho.

(9) “Department” means the Idaho transportation department.

(10) “Director” means the director of the Idaho transportation department or his agent.

(11) “Board” means the Idaho transportation board. [1947, ch. 130, § 1, p. 315; am. 1974, ch. 12, § 106, p. 61; am. 2005, ch. 174, § 3, p. 537.]

JUDICIAL DECISIONS

Cited in: Dunham v. Hackney Airpark, Inc., 133 Idaho 613, 990 P.2d 1224 (Ct. App. 1999).

RESEARCH REFERENCES

C.J.S. — 2A C.J.S., Aeronautics and Aerospace, § 53. property near airport as taking of property. 18 A.L.R.4th 542.

A.L.R. — Zoning regulations limiting use of

21-502. Aviation hazards contrary to public interest. — It is hereby found that an aviation hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of aircraft thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared:

(a) That the creation or establishment of an aviation hazard is a public nuisance and an injury to the community served by the airport in question;

(b) That it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of aviation hazards be prevented;

(c) That this should be accomplished, to the extent legally possible, by exercise of the police power, without compensation.

It is further declared that both the prevention of the creation or establishment of aviation hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing aviation hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land and property interests therein. [1947, ch. 130, § 2, p. 315; am. 2005, ch. 174, § 4, p. 537.]

21-503. Airport zoning regulations. — (1) Power to Adopt Regulations. In order to prevent the creation or establishment of aviation hazard, the state of Idaho, by and through the Idaho transportation department, may adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for aviation hazard areas within the state, which regulations may divide such area into zones, and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.

(2) Method of Adopting Zoning Regulations. The department shall promulgate and adopt in the manner and in conformance with the procedure set forth in this chapter such reasonable regulations for the zoning of airports, aviation hazard areas and aviation hazards within the state as may be reasonably necessary to accomplish the highest degree of safety for aircraft operations. Prior to adopting any zoning regulations:

(a) The director shall cause to be prepared a map or maps as the individual situation may require, for each airport, and surrounding

aviation hazard area to be zoned. Such map shall contain a description of the exterior boundaries of the area to be included within the zoning regulations, the boundaries and runways of the airport and shall disclose the existing and any planned approaches to the subject airport, the proposed glide angles and restricted areas deemed necessary by the director, and such other information as may be deemed helpful by the director to fairly portray the areas involved and the airspace required.

(b) The director shall also cause to be prepared proposed regulations setting forth the various zones within the area and the restrictions applicable to each. Zones may be named or numbered or otherwise designated to distinguish one zone from another.

(c) Such proposed regulations and the map or maps of the area involved shall be filed with the county recorder of the county or counties in which the airport or any part thereof is situated.

(d) To amend any adopted zoning regulations the director shall proceed in the same manner set forth for the adoption of regulations except that he need only give notice and file maps and regulations that relate to the particular amendment to be made.

Upon the approval and designation of any airport in this state the department may immediately thereafter take such steps necessary under this chapter to zone the aviation hazard area adjacent to such airport and the department shall, if requested by the owners of any existing airport which has heretofore been approved and designated and which is open to public use, take such steps necessary under this chapter to zone the aviation hazard area adjacent to such airport, or the director may proceed to zone any such area without such a request. [1947, ch. 130, § 3, p. 315; am. 1957, ch. 187, § 1, p. 369; am. 1974, ch. 12, § 107, p. 61; am. 1975, ch. 111, § 1, p. 229; am. 2005, ch. 174, § 5, p. 537.]

21-504. Procedure for zoning an aviation hazard area. — No aviation hazard shall be zoned or an existing zoning amended or changed by the department except after a public hearing in relation thereto, at which hearing parties in interest and any citizen shall have an opportunity to be heard. At least fifteen (15) days' notice of such hearing shall be published in a newspaper of general circulation printed in the county in which such aviation hazard is situated and if there be no such newspaper, then by posting a copy of the notice in three (3) of the most public places in the county.

The notice shall refer all persons interested to the maps of the area involved and the proposed regulations on file with the county recorder of the county in which the airport is located. The date, time and place of the hearings [hearing] shall also be set forth in the notice. At such hearing all persons interested may appear either in person, in writing or by counsel and make any objections they may have to the proposed regulations. The director shall preside at the hearing and a record of all objections filed shall be kept on file in the office of the director. The meeting may be continued from day to day to permit all who appear on the day of the hearing adequate time to be heard and the proposed regulations may at the conclusion of the

hearing be declared adopted by the director or he may amend the regulations by lessening the requirements contained therein and declare the amended regulations adopted but the director shall not increase the regulations without repeating the notice provided for by this section. After the regulations have been adopted copies thereof and copies of the maps corrected to reflect the regulations as approved by the director shall be permanently filed with the county recorder of the county in which the airport or any part thereof is situated. [1947, ch. 130, § 4, p. 315; am. 1957, ch. 187, § 2, p. 369; am. 2005, ch. 174, § 6, p. 537.]

STATUTORY NOTES

Cross References. — Notice by mail,
§ 60-109A.

Publication of notice, § 60-109.

Compiler's Notes. — The bracketed insertion in the second paragraph was added by the compiler.

21-505. Airport zoning requirements. — All airport zoning regulations and rules promulgated under this chapter shall be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purpose of this chapter. In determining what regulations shall be adopted, the department shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the aviation hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable. [1947, ch. 130, § 5, p. 315; am. 1957, ch. 187, § 3, p. 369; am. 2005, ch. 174, § 7, p. 537.]

21-505A. Permits and variances — Marking and lighting. — Any airport zoning regulations adopted under this chapter may require that a permit be obtained from the director before any new structure or use may be constructed or established within the zoned area. Any person desiring to erect any structure, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property in violation of airport zoning regulations adopted under this chapter may apply to the director of the Idaho transportation department for a special permit authorizing such action. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty and unnecessary hardship and the relief granted would not be contrary to the public interest or create undue hazards to air flight. Any such special permits may be allowed subject to such reasonable conditions as the director may deem necessary to effectuate the purposes of the regulations, including the condition that the owners of the structure or tree in question permit the department or other political subdivision of this state having an interest in the airport in question to install, operate and maintain thereon at its own expense such markers and lights as may be necessary to indicate to flyers the presence of an aviation hazard. [I.C., § 21-505A, as added by 1957, ch. 187, § 4, p. 369; am. 1974, ch. 12, § 108, p. 61; am. 2005, ch. 174, § 8, p. 537.]

21-505B. Relation to comprehensive zoning regulations. — In the event that a political subdivision of this state has adopted or hereafter adopts, a comprehensive zoning ordinance or regulation covering the same area or portions thereof that may be covered by any regulations adopted under this act, then the airport zoning regulations applicable to the area may be incorporated in and made a part of such comprehensive zoning regulations and be administered and enforced in connection therewith. In the event of conflict between any airport zoning regulations adopted under this act and any other regulations applicable to the same area the more stringent limitations or requirement shall govern and prevail. [I.C., § 21-505B, as added by 1957, ch. 187, § 5, p. 369.]

STATUTORY NOTES

Compiler's Notes. — Section 7 of S.L. 1957, ch. 187 read: "The words 'this act' as used in this act refer to 'The Airport Zoning Act' as amended."

"The Airport Zoning Act" is comprised of

S.L. 1947, ch. 130, as amended, compiled as §§ 21-501 — 21-505, 21-506 — 21-510. Laws 1957, ch. 187, § 5 added §§ 21-505A and 21-505B to the Airport Zoning Act.

21-506. Judicial review. — Any person aggrieved, or any taxpayer affected, by any decision of the department may appeal any zoning regulation or order affecting such person or taxpayer to the district court of the judicial district in which the aviation hazard area involved is situated, in the same manner in which appeals are taken from the board of county commissioners to the district court.

The court shall have jurisdiction to affirm, modify or set aside the regulations appealed from but the invalidity of one (1) regulation shall not affect the validity of the remaining regulations. In any case in which airport zoning regulations adopted under this chapter, although generally reasonable, are held by the court having jurisdiction to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land as to constitute a taking or deprivation of that property in violation of the constitution of this state or the constitution of the United States such holding shall not affect the application of such regulations to other structures or parcels of land. [1947, ch. 130, § 6, p. 315; am. 1957, ch. 187, § 6, p. 369; am. 2005, ch. 174, § 9, p. 537.]

STATUTORY NOTES

Cross References. — Appeals from board of county commissioners to district court, § 31-1506 et seq.

Effective Dates. — Section 8 of S.L. 1957, ch. 187 declared an emergency. Approved March 9, 1957.

21-507. Enforcement and remedies. — Each violation of this act or of any regulations, orders, or rulings promulgated or made pursuant to this act, shall constitute a misdemeanor and shall be punishable by a fine of not more than \$300 or imprisonment for not more than six (6) months or by both such fine and imprisonment, and each day a violation continues to exist shall constitute a separate offense. In addition, the department in behalf of

the state may institute in any court of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of this act, or of airport zoning regulations adopted under this act, or of any order or ruling made in connection with the administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction, which may be mandatory or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this act and of the regulations adopted and orders and rulings made pursuant thereto. [1947, ch. 130, § 7, p. 315.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1947, ch. 130, the airport zoning act, compiled as §§ 21-501 to 21-505, 21-506 to 21-510. S.L. 1957, ch. 187 added §§ 21-505A and 21-505B to the airport zoning act.

21-508. Acquisition of air rights. — In any case in which: (1) it is desired to remove, lower, or otherwise terminate a nonconforming structure or use; or (2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this act; or (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is located or the political subdivision owning the airport or served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which the state is authorized to acquire real property for public purposes, such air right, navigation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of this act. [1947, ch. 130, § 8, p. 315.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 21-507.

21-509. Separability. — If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [1947, ch. 130, § 9, p. 315.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 21-507.

21-510. Short title. — This act shall be known and may be cited as "The Airport Zoning Act." [1947, ch. 130, § 10, p. 315.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 21-507.

21-511. State land adjacent to public airport — Notice of intention to sell or lease. — No land owned by the state of Idaho adjacent to a public airport, or adjacent to land acquired for use in connection with such airport, shall be sold or leased without first giving to the public authorities owning such airport at least twenty (20) days' written notice of the intention to sell or lease such state land. [1941, ch. 6, § 1, p. 14.]

STATUTORY NOTES

Compiler's Notes. — It is to be noted that this section and § 21-512, though related in subject matter, are a separate enactment from the Airport Zoning Act.

21-512. Authority to sell or lease. — The state board of land commissioners is hereby authorized to lease any state lands adjacent to any public airport, or adjacent to lands acquired for use in connection with such airport, for public airport purposes, or for use in connection with such airport, upon such conditions as the board may determine for the best interests of the state, and for such term as said lands shall be used or be deemed desirable for use in connection with such public airport, provided, however, that any granted lands from the United States government to the state under the provisions of section 5 of the Idaho Admission Bill [26 Stat. at Large, ch. 656, p. 215] may be leased for a term not exceeding five (5) years. [1941, ch. 6, § 2, p. 14.]

STATUTORY NOTES

Cross References. — State board of land commissioners, art. IX, § 7, Idaho Const. and § 58-101 et seq.

Compiler's Notes. — The bracketed reference "26 Stat. at Large, ch. 656, p. 215" was inserted by the compiler. The Idaho Admission Bill appears in the first volume of the Idaho Code.

21-513. Declaration of policy. — As a guide to the interpretation and application of this act, the public policy of this state is declared to be that any hazard to the safety of air flight may cause disastrous and needless loss of life and property, that safety in air flight is of paramount importance for the protection and well-being of the people, that the use of the air space is constantly increasing and is vital to the continued growth, development and enjoyment of the great natural resources and economy of this state and that the general welfare of the citizens of this state requires, under the police powers of the state, that maximum safety precautions to air commerce be enacted and maintained. [1955, ch. 241, § 1, p. 540.]

STATUTORY NOTES

Compiler's Notes. — For words "this act" refer to S.L. 1955, ch. 241, compiled as §§ 21-513 — 21-520.

21-514. Definition of terms. — As used in this act the terms structure, person, department and director shall have the meanings defined in section 21-501, Idaho Code. [1955, ch. 241, § 2, p. 540.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 21-513.

21-515. Marking of hazards to air flight. — Any structure when determined by the director of the Idaho transportation department to be a hazard or potential hazard to the safe flight of aircraft shall be plainly marked, illuminated, painted, lighted or designated in a manner to be approved by the director, so that the same will be clearly visible to airmen. [1955, ch. 241, § 3, p. 540; am. 1974, ch. 12, § 109, p. 61; am. 2005, ch. 174, § 10, p. 537.]

21-516. Determination of hazards. — In determining the structures which are or may be a hazard to air flight the director shall consider the terrain, character of the neighborhood, uses to which the structure and surrounding property may be adaptable, and the character of the flying operations expected to be conducted in the area. [1955, ch. 241, § 4, p. 540; am. 2005, ch. 174, § 11, p. 537.]

21-517. Procedure for determination of hazards. — When the director determines that a structure is a probable hazard within the meaning of this chapter, he shall notify the owner of the land, or operator or owner of the structure who shall have twenty (20) days after the receipt of such notice to show cause why such structure should not be determined to be a hazard. [1955, ch. 241, § 5, p. 540; am. 2005, ch. 174, § 12, p. 537.]

21-518. Judicial review. — Any person aggrieved by the decision of the director in making a determination within the meaning of this act may appeal such determination to the district court of the judicial district in which such structure is situated in the same manner in which appeals are taken from the board of county commissioners to the district court. [1955, ch. 241, § 6, p. 540.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 21-513.

21-519. Rules and regulations. — The director of the Idaho transportation department shall adopt and may, as conditions require, amend such rules and regulations as he deems necessary to provide reasonable standards of marking, painting, lighting, illuminating, designating and maintaining any such air flight hazards to the end that the same will be made clearly visible to airmen in order that maximum safety may be provided for air flight. [1955, ch. 241, § 7, p. 540; am. 1974, ch. 12, § 110, p. 61.]

STATUTORY NOTES

Effective Dates. — Section 124 of S.L. 1974, ch. 12, provided the act should take effect on and after July 1, 1974.

21-520. Violation of act, penalties, injunction. — Whenever any person refuses or neglects to illuminate, mark, paint, designate or light, as required by this act, a structure owned or operated by him after the same has been designated by the director to be an obstruction to air flight, he shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than \$100, nor more than \$300, for each offense, or the director may maintain an action in the name of the state of Idaho to compel compliance by mandatory injunction.

That after the first conviction and fine, every subsequent period of 30 days during which such person neglects to comply with the provisions of this section, shall constitute a separate offense and be punishable as provided herein. [1955, ch. 241, § 8, p. 540.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 21-513.

Section 9 of S.L. 1955, ch. 241 read: "If any section, subsection, sentence, clause, or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that

it would have passed this act and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more in section, subsection, sentence, clause or phrase be declared unconstitutional."

Effective Dates. — Section 10 of S.L. 1955, ch. 241 declared an emergency. Approved March 15, 1955.

CHAPTER 6

STATE LANDS RESERVED FOR PUBLIC AIRPORTS

SECTION.

21-601, 21-602. [Repealed.]

21-603. Twin Falls County — Description of lands.

21-604. Twin Falls County — Lease of lands.

SECTION.

21-605. Valley County — Description of lands.

21-606. Valley County — Lease of lands.

21-601, 21-602. Ada County — Description — Lease of lands. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, 25, were repealed by S.L. 1974, ch. 209, § 1, which comprised S.L. 1937, ch. 14, §§ 1, 2, p. 1547.

21-603. Twin Falls County — Description of lands. — The following described state lands are hereby reserved from sale, so long as the same shall be used for the purpose of an airport maintained by public authority.

The northeast quarter of the southwest quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$), the south half of the northwest quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$), the northeast quarter of the northwest quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$), the northwest quarter of the northwest

quarter ($NW\frac{1}{4}NW\frac{1}{4}$), the southwest quarter of the northeast quarter ($SW\frac{1}{4}NE\frac{1}{4}$), the northwest quarter of the northeast quarter ($NW\frac{1}{4}NE\frac{1}{4}$), the southeast quarter of the northeast quarter ($SE\frac{1}{4}NE\frac{1}{4}$), the south half of the southwest quarter ($S\frac{1}{2}SW\frac{1}{4}$), the northwest quarter of the southwest quarter ($NW\frac{1}{4}SW\frac{1}{4}$), and the northeast quarter of the northeast quarter ($NE\frac{1}{4}NE\frac{1}{4}$), all in section sixteen (16), township eleven (11), south of range seventeen (17) east of the Boise Meridian, containing four hundred and eighty (480) acres in Twin Falls County, Idaho. [1937, ch. 121, § 1, p. 182.]

21-604. Twin Falls County — Lease of lands. — The state board of land commissioners is hereby authorized to lease the lands described in section 21-603[, Idaho Code], for public airport purposes upon such conditions as the board may determine best in the interests of the state and for such a term as said land shall be used for such purposes.

Said lands are now needed and in part used as a portion of a site for an airport to be constructed in cooperation with the federal government, the city of Twin Falls, the works progress administration and other public agencies or organizations which have already spent a large sum of money in the partial construction of such airport. [1937, ch. 121, § 2, p. 182.]

STATUTORY NOTES

Cross References. — State board of land commissioners, art. IX, § 7, Idaho Const. and § 58-101 et seq.

Compiler's Notes. — The bracketed insertion in the first paragraph was added by the compiler.

21-605. Valley County — Description of lands. — The following described state lands are hereby reserved from sale so long as the same shall be used for the purpose of an airport maintained by public authority.

All of lot seven (7) and the northeast quarter of the northeast quarter of the southwest quarter ($NE\frac{1}{4}NE\frac{1}{4}SW\frac{1}{4}$) of section sixteen (16), township sixteen (16) north, range twelve (12) east of the Boise Meridian; and that portion of lot four (4) of said section 16 described as follows: Beginning at the southwest (SW) corner of lot four (4); thence north six hundred and sixty feet (660 ft.); thence east to the western meander line of the Middle Fork of the Salmon River; thence southeast (SE) following said meander line to the southeast (SE) corner of lot four (4); thence west to the point of beginning, containing fifty (50) acres more or less. [1939, ch. 147, § 1, p. 264.]

21-606. Valley County — Lease of lands. — The state board of land commissioners is hereby authorized to lease the lands described in section 21-605[, Idaho Code], for public airport purposes upon such terms and conditions as the board may determine best in the interest of the state and for such a term as said land shall be used for such purposes. [1939, ch. 147, § 2, p. 264.]

STATUTORY NOTES

Cross References. — State board of land commissioners, art. IX, § 7, Idaho Const. and § 58-101 et seq.

Compiler's Notes. — The bracketed insertion was added by the compiler.

CHAPTER 7

DAMAGES TO AIRCRAFT

SECTION.

21-701. Definitions.

21-702. Stealing from, interfering with, or destruction of aircraft or air navigation facilities.

SECTION.

21-703. Penalty when death results.

21-701. Definitions. — The following words and phrases when used in this chapter are defined to mean the following:

(a) "Aircraft" means any contrivance now known or hereafter invented used or designed for navigation of or flight in the air.

(b) "Aircraft engine" means an engine used or intended to be used for propulsion of aircraft and includes all parts, appurtenances and accessories thereof other than propellers.

(c) "Aircraft navigation facility" means any facility used in, available for use in, or designed for use in, aid of air navigation, including landing areas, lights, any apparatus or equipment for disseminating weather information, for signaling, for radio-directional finding, or for radio or other electrical communication, and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air or the landing and takeoff of aircraft.

(d) "Airport" means any area of land or water which is used, or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon. The term "airport" shall include such other common terms as aviation field, airfield, intermediate landing field, landing field, landing area, airstrip, and landing strip. For purposes of this chapter the term "airport" refers to a publicly owned and managed facility that is open for public use without operational restrictions on its use.

(e) "Appliances" means instruments, equipment, apparatus, parts, appurtenances, or accessories, of whatever description which are used, or are capable of being or intended to be used, in the navigation, operation, or control of aircraft in flight, including parachutes and including radio and communication equipment and any other mechanism or mechanisms whether or not installed in or attached to aircraft during flight.

(f) "Person" means any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(g) "Propeller" includes all parts, appurtenances, and accessories thereof.

(h) "Spare parts" means parts, appurtenances, and accessories of aircraft (other than aircraft engines and propellers), of aircraft engines (other than

propellers), of appliances, maintained for installation or use in an aircraft, aircraft engine, propeller, or appliance, but which at the time are not installed therein or attached thereto. [1963, ch. 359, § 1, p. 1028; am. 2005, ch. 174, § 13, p. 537.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

21-702. Stealing from, interfering with, or destruction of aircraft or air navigation facilities. — Any person who intentionally or with reckless disregard for the safety of human life:

(a) damages, destroys, disables, sets fire to, tampers with, or wrecks any aircraft, aircraft navigation facility, or aircraft engine, propeller, radio, antenna or spare part, or cuts any wire or removes, damages, or tampers with any functional part of any aircraft or air navigation facility, or,

(b) places or causes to be placed any destructive substance in, upon, or in proximity to, any such aircraft or any aircraft engine, propeller, appliance, spare part, fuel, lubricant, hydraulic fluid or other material used or intended to be used in connection with the operation of any such aircraft or any cargo carried or intended to be carried on any such aircraft or otherwise makes or causes to be made any such aircraft, engine, propeller, appliance, spare part, fuel, lubricant, hydraulic fluid or other material unworkable or unusable or hazardous to work or use, or

(c) removes, steals, takes or carries away any part of an aircraft, aircraft engine, propeller, radio, air navigation facility or appliance used in connection with an aircraft, or

(d) throws an object at, or drops an object upon, a moving aircraft, such object having the apparent capability to do harm, or

(e) discharges an arrow, gun, airgun or firearm at or toward an aircraft, shall be guilty of a felony and shall be punished by a fine of not more than ten thousand dollars (\$10,000) or imprisonment for not more than twenty (20) years, or by both such fine and imprisonment. [1963, ch. 359, § 2, p. 1028; am. 1983, ch. 82, § 1, p. 168.]

21-703. Penalty when death results. — Any person who is convicted of any crime prohibited by this chapter which has resulted in the death of any person shall be subject also to imprisonment for life if the jury shall in its discretion so direct, or in the case of a plea of guilty or a plea of not guilty where the defendant has waived a trial by jury if the court in its discretion shall so order. [1963, ch. 359, § 3, p. 1028.]

STATUTORY NOTES

Compiler's Notes. — Section 4 of S.L. 1963, ch. 359, § 4 read: "If any section, subsection, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of

the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more other

sections, subsections, sentences, clauses, or phrases be declared unconstitutional.”
Effective Dates. — Section 5 of S.L. 1963, ch. 359 declared an emergency. Approved March 29, 1963.

CHAPTER 8

REGIONAL AIRPORTS

SECTION.	SECTION.
21-801. Purpose — Development of regional airports.	apportionment — Trustee representation.
21-802. Division into regions.	21-806. Election of board of trustees. [Effective until January 1, 2011.]
21-803. Appointment of boards of trustees.	21-806. Election of board of trustees. [Effective January 1, 2011.]
21-804. Degree of financial participation by counties.	21-807. Powers of board.
21-805. Regional airport authority — Establishment by election. [Effective until January 1, 2011.]	21-808. Issuance of bonds.
21-805. Regional airport authority — Establishment by election. [Effective January 1, 2011.]	21-809. Bond issue — Submission to electors for approval.
21-805A. Annexation to existing authority — Election.	21-810. Records — Audits — Bonds.
21-805B. Withdrawal from existing authority — Election — Indebtedness	21-811. Purpose — Exemption from taxation.
	21-812. Issuance of revenue bonds.
	21-813. [Reserved.]
	21-814. Dissolution of authority.

21-801. Purpose — Development of regional airports. — The purpose of this act is to provide for the development of regional airports in the state of Idaho, with the financial participation of the individual counties to be based on benefits received therefrom. In determining benefits received, it is the express intention of the legislature that the following factors be considered: distance from regional airport, population of county, and tax base of county. [1967, ch. 277, § 1, p. 776.]

STATUTORY NOTES

Cross References. — Aeronautical Administration Act of 1970, § 21-131 et seq.
Compiler’s Notes. — The words “this act” refer to S.L. 1967, chapter 277, which is compiled as §§ 21-801 to 21-805 and 21-806 to 21-811.

21-802. Division into regions. — For the purpose of this act, the state of Idaho is divided into five (5) air regions, consisting of the following counties, to-wit: the northern region shall consist of Benewah, Bonner, Boundary, Kootenai and Shoshone counties; the north central region shall consist of Clearwater, Idaho, Latah, Lewis and Nez Perce counties; the southwestern region shall consist of Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley and Washington counties; the south central region shall consist of Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls counties; and the eastern region shall consist of Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Clark, Custer, Franklin, Fremont, Jefferson, Lemhi, Madison, Oneida, Power and Teton counties. [1967, ch. 277, § 2, p. 776.]

STATUTORY NOTES

Compiler's Notes. — For words “this act”, see Compiler's Notes, § 21-801.

21-803. Appointment of boards of trustees. — The Idaho transportation board shall, upon receipt of a petition signed by not less than twenty-five (25) electors from each legislative district within an air region as described in section 21-802, Idaho Code, appoint an interim board of trustees to consist of one (1) appointee from each legislative district in the region. Members of such boards shall serve without pay until such time as the regional airport authority is established and tax levying authority granted, after which such boards shall be reimbursed for actual and necessary expenses incurred in the performance of official duties. At the first meeting of each such board, a chairman shall be selected from the membership of the respective board. Such interim boards shall serve in such capacity until their successors are elected and qualified as provided in section 21-806, Idaho Code, and such boards shall exercise all powers and duties granted to the permanent board of trustees under section 21-807, Idaho Code. [1967, ch. 277, § 3, p. 776; am. 1974, ch. 12, § 111, p. 61; am. 1976, ch. 220, § 1, p. 793.]

STATUTORY NOTES

Cross References. — Idaho transportation board, § 40-301 et seq.

21-804. Degree of financial participation by counties. — Each interim board of trustees shall, with the advice and assistance of the Idaho transportation board, establish a formula for the degree of financial participation in a regional airport authority by each such county in the region, based upon the benefits each county would receive therefrom. In establishing the formula, the interim board of trustees shall consider the distance of each county seat from the proposed regional airport, the tax base of each county and the population of each county. Before any election may be held to establish a regional airport authority, the interim board of trustees shall have established, on a percentage basis, the degree of financial participation expected of each county in the region. The board shall, in addition, determine the location of the proposed regional airport. [1967, ch. 277, § 4, p. 776; am. 1974, ch. 12, § 112, p. 61.]

STATUTORY NOTES

Cross References. — Idaho transportation board, § 40-301 et seq.

21-805. Regional airport authority — Establishment by election. [Effective until January 1, 2011.] — A regional airport authority may be established by the vote of the electors of such region, voting at an election called and held as provided in chapter 14, title 34, Idaho Code, with special provisions as provided in this chapter:

(a) A petition signed by not less than five percent (5%) of the electors from each voting precinct county in the region, describing the degree of percentage of financial participation of each such county in the district and the proposed location of the regional airport, and praying for the organization of the region as a regional airport authority, together with a true copy thereof, shall be filed with the Idaho transportation department. Prior to filing such petition each board of county commissioners of the counties in the region shall verify the validity of the signatures within the county.

(b) Upon approval of the petition, the Idaho transportation department shall advise the boards of county commissioners of the counties in the region of the date of the election, and each such board shall enter an order that an election be held for the purpose of voting on the question of the creation of such regional airport authority. Notice of election must be posted, notice shall be published, the election shall be conducted and the returns thereof canvassed as required in chapter 14, title 34, Idaho Code. Provided, however, as a condition of voting in such election, an elector shall meet the qualifications prescribed in section 34-402, Idaho Code, and in addition shall be a resident of the proposed regional airport authority. The ballot shall contain the words "Regional Airport Authority— Yes" and "Regional Airport Authority— No," each followed by a box in which the voter may express his choice by marking a cross "X." The board of county commissioners of each county shall conduct such election and canvass the returns thereof as though it were the only county in which such election were being held. The returns of the election so canvassed shall be certified promptly to the Idaho transportation department and if a majority of all of the votes cast in three (3) or more contiguous counties be in the affirmative, then the Idaho transportation department shall enter an order declaring such regional airport authority established within the limits of those counties that did vote in the affirmative, and shall certify such fact to the board of county commissioners of each county in the region in which an affirmative vote was cast. Counties which voted in the negative shall be excluded from the regional airport authority and shall be so notified by the Idaho transportation department. The cost of providing such election shall be paid by the respective boards of county commissioners, from any funds available to such county. Provided, however, if the interim board of trustees is convinced that it would be impracticable for the three (3) contiguous counties to establish a regional airport authority, and so certifies to the Idaho transportation department and the board of county commissioners of those counties that did vote in the affirmative, the election shall be null and void and the authority shall not be created. [1967, ch. 277, § 5, p. 776; am. 1970, ch. 35, § 1, p. 73; am. 1974, ch. 12, § 113, p. 61; am. 1995, ch. 118, § 2, p. 417.]

STATUTORY NOTES

Compiler's Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 21-805.

The word "county" in the second line of paragraph (a) was inserted following the

words "voting precinct" by the 1970 amendment, at which time it is probable that the words "voting precinct" should have been deleted; however, they were included in the law as signed by the governor.

21-805. Regional airport authority — Establishment by election. [Effective January 1, 2011.] — A regional airport authority may be established by the vote of the electors of such region, voting at an election called and held as provided in chapter 14, title 34, Idaho Code, with special provisions as provided in this chapter:

(a) A petition signed by not less than five percent (5%) of the electors from each county in the region, describing the degree of percentage of financial participation of each such county in the district and the proposed location of the regional airport, and praying for the organization of the region as a regional airport authority, together with a true copy thereof, shall be filed with the Idaho transportation department. Prior to filing such petition each clerk of the board of county commissioners of the counties in the region shall verify the validity of the signatures within the county.

(b) Upon approval of the petition, the Idaho transportation department shall advise the boards of county commissioners of the counties in the region of the date of the election, which shall occur in May of even-numbered years, and each such board shall enter an order that an election be held for the purpose of voting on the question of the creation of such regional airport authority. Notice of election shall be published, the election shall be conducted and the returns thereof canvassed as required in title 34, Idaho Code. Provided, however, as a condition of voting in such election, an elector shall meet the qualifications prescribed in section 34-402, Idaho Code, and in addition shall be a resident of the proposed regional airport authority. The ballot shall contain the words "Regional Airport Authority—Yes" and "Regional Airport Authority—No," each followed by a box in which the voter may express his choice by marking the ballot. The county clerk of each county shall conduct such election and the county board of canvassers shall canvass the returns thereof as though it were the only county in which such election were being held. The returns of the election so canvassed shall be certified promptly to the Idaho transportation department and if a majority of all of the votes cast in three (3) or more contiguous counties be in the affirmative, then the Idaho transportation department shall enter an order declaring such regional airport authority established within the limits of those counties that did vote in the affirmative, and shall certify such fact to the board of county commissioners of each county in the region in which an affirmative vote was cast. Counties which voted in the negative shall be excluded from the regional airport authority and shall be so notified by the Idaho transportation department. The cost of providing such election shall be paid by the respective boards of county commissioners, from funds available to such county. Provided, however, if the interim board of trustees is convinced that it would be impracticable for the three (3) contiguous counties to establish a regional airport authority, and so certifies to the Idaho transportation department and the board of county commissioners of those counties that did vote in the affirmative, the election shall be null and void and the authority shall not be created. [1967, ch. 277, § 5, p. 776; am. 1970, ch. 35, § 1, p. 73; am. 1974, ch. 12, § 113, p. 61; am. 1995, ch. 118, § 2, p. 417; am. 2009, ch. 341, § 2, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, in subsection (a), in the first sentence, deleted “voting precinct” preceding “county in the region” and, in the last sentence, inserted “clerk of the”; and, in subsection (b), inserted “which shall occur in May of even-numbered years” in the first sentence, deleted “must be posted, notice” following “Notice of election” and “chapter 14” preceding “title 34” in the second sentence, substituted “marking the ballot” for “marking a cross ‘X’” in the fourth sentence, substituted

“county clerk” for “board of county commissioners” and inserted “the county board of canvassers shall” in the fifth sentence, and deleted “any” preceding “funds” in the eighth sentence.

Compiler’s Notes. — For this section as effective until January 1, 2011, see the preceding section, also numbered § 21-805.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

21-805A. Annexation to existing authority — Election. — Subsequent to the organization of a regional airport authority, any county which is contiguous and which voted in the negative and was excluded from the authority at the time of the election held as provided in section 21-805, Idaho Code, may vote to join the authority. The provisions of section 21-805, Idaho Code, shall apply as nearly as possible to the election to be held. The question to be submitted to the electors of the existing authority and to the electors of the county wishing to be annexed shall clearly indicate the degree of financial participation of each of the participating counties should the annexation be approved, the division among the participating counties of any existing bond or debt obligations should the annexation be approved, and the representation on the permanent board of trustees to be given the annexed county should the annexation be approved. If a majority of all the votes cast in the existing district be in the affirmative, and if a majority of the votes cast in the county wishing to be annexed be in the affirmative, the Idaho transportation department shall enter an order declaring such county to be a part of the regional airport authority, and shall certify such fact to the board of county commissioners of each county in the authority. [I.C., § 21-805A, as added by 1970, ch. 35, § 2, p. 73; am. 1974, ch. 12, § 114, p. 61.]

STATUTORY NOTES

Effective Dates. — Section 124 of S.L. 1974, ch. 12 provided the act should take effect on and after July 1, 1974.

21-805B. Withdrawal from existing authority — Election — Indebtedness apportionment — Trustee representation. — Subsequent to the organization of a regional airport authority, the electors of any county which has joined the regional airport authority may call for an election to have such county withdraw from the authority in the manner, and subject to the provisions, herein in this section provided:

(1) Such election for withdrawal may be called for by the submission to the board of trustees of the regional airport authority of petitions containing the statements and information hereinafter set forth, signed by not less than five percent (5%) of the qualified electors of each county which is a member of the authority, as defined in section 34-402, Idaho Code, existing

as of the date of submission of such petitions to the county clerks for verification as hereinafter provided.

(2) Prior to submitting such petition for withdrawal to the board of trustees of the regional airport authority, the electors submitting such petition shall obtain from the county clerks of each county which is a member of the authority, and submit to the board of trustees with such petitions, a verification of the validity of the signatures upon such petitions; a verification as to which of such signatures are those of electors qualified in accordance with the provisions of section 34-402, Idaho Code, at the time of the submission of the petition; and a certification as to the total number of qualified electors existing in the county as of the date of the submission of such petition to the clerk.

(3) The petitions submitted shall specify the county whose withdrawal from the authority is sought, and shall contain the names, addresses and dates of signing of each of the electors signing such petition, and the following statements: that the persons signing are bona fide residents of a county within the authority and electors qualified under the provisions of section 34-402, Idaho Code; that the persons signing desire to have an election held to determine whether or not the county specified in the petition should withdraw from the regional airport authority; and that the persons signing understand that if such withdrawal should become effective following an election, the taxpayers and property of the county withdrawing would remain liable following such withdrawal for that county's proportionate share of all bonded, warrant, and other indebtedness incurred by the regional airport authority prior to the time of such withdrawal as determined by the board of trustees in accordance with the provisions herein provided.

(4) Upon receiving such petitions and the verifications and certifications from the county clerks of each county which is a member of the authority, the board of trustees shall, at its next regularly scheduled meeting, determine the percentage that the assessed valuation of the county whose withdrawal is petitioned bears to the total assessed valuation figures utilized in the authority's most recent ad valorem budget certification, and shall forward such petitions, county clerks' verifications and certifications, and assessed valuation percentage determination to the Idaho transportation department with a request that the Idaho transportation department enter an order directing the board of county commissioners of each county which is a member of the authority to hold an election for the purpose of determining whether or not the withdrawal petitioned for should be approved or disapproved.

(5) Upon receipt of such petitions, county clerks' verifications and certifications, assessed valuation percentage computation, and request from the regional airport authority, the Idaho transportation department shall, within ten (10) days of receipt thereof, enter and forward to the board of county commissioners of each county which is a member of the authority an order directing such boards of county commissioners to conduct an election within their counties, in the manner herein described, to determine whether or not such withdrawal from the regional airport should be approved, and to

canvass the returns thereof, and to certify the results of such canvass to the Idaho transportation department and the regional airport authority. Such order shall direct that such election shall be held on the next election held as provided in section 34-106, Idaho Code, following such order; shall specify the amount of the existing regional airport authority indebtedness for which the county will remain liable should withdrawal be approved; and shall order that such information be set forth on the notice of election and ballot to be prepared by the counties.

(6) Upon receipt of such order from the Idaho transportation department, the county commissioners of each county which is a member of the authority shall enter an order directing that an election shall be held on the next election held as provided in section 34-106, Idaho Code, following the order from the Idaho transportation department to determine whether or not the withdrawal from the regional airport authority petitioned for should be approved. Such election shall thereafter be conducted as provided in chapter 14, title 34, Idaho Code, by the county commissioners and notice thereof shall be published in a newspaper of general circulation within the county once not less than twelve (12) days prior to the election, and a second time not less than five (5) days preceding the holding of the election. The notice shall specify that the purpose thereof is to determine whether or not the county specified in the petition should withdraw from the regional airport authority; shall designate the polling places within the county where electors may vote upon such question; shall specify the times during which the polling places will be open; shall specify that persons wishing to vote must possess the qualifications of electors as set forth in section 34-402, Idaho Code; and shall state that if such withdrawal becomes effective, the taxpayers and property of the county whose withdrawal is approved shall remain liable following such withdrawal for the percentage of all bonded, warrant, and other indebtedness of the regional airport authority determined by the board of trustees and certified to the Idaho transportation department as hereinabove provided, existing as of the date of such election. The county commissioners shall arrange for such polling places; appoint the necessary election judges and other personnel required to conduct such election; and shall conduct such election at the time and at the polling places specified in the notice thereof. At its next regularly scheduled meeting following the holding of such election the boards of county commissioners shall canvass and certify the results thereof to the Idaho transportation department and the regional airport authority. All costs and expenses incurred in conducting such election shall be paid by the counties conducting such election.

(7) The ballot used in such election shall indicate the percentage of the existing liability of the authority for which the county taxpayers and property of the withdrawing county shall remain liable if withdrawal from the authority is approved, and the question to be submitted to the voters by such ballot shall be whether or not the county specified should withdraw from the regional airport authority, and shall be followed by a box in which the voter may express his choice, either yes or no, by marking an "X" in the appropriately designated box.

(8) If a majority of the voters voting at such election shall vote in the affirmative for the withdrawal of the county from the regional airport authority, the board of trustees of the regional airport authority at their next regular meeting following certification of such election results to them by the boards of county commissioners, shall determine the total amount of all bonded, warrant, and other indebtedness of the authority existing as of the date of such election, and shall certify the amounts of all such indebtednesses, and to whom owed, to the Idaho transportation department within ten (10) days following such meeting. If the certifications from the boards of county commissioners shall indicate that a majority of the voters voting at such election voted in the negative on the question of whether such counties should withdraw from the authority, the board of trustees need not make such determination or certification to the Idaho transportation department.

(9) If the Idaho transportation department receives a certification from the boards of county commissioners that such election has been held, that the votes thereof have been canvassed, and that a majority of the persons voting at such election have voted in the affirmative to have such county withdraw from the regional airport authority, the Idaho transportation department shall upon receipt of certification from the board of trustees of the regional airport authority of the amount of bonded, warrant, and other indebtedness of the authority existing as of the date of such election, enter and deliver to the board of county commissioners of each county which is a member of the authority and the board of trustees of the regional airport authority an order that the electors having voted in the affirmative for such withdrawal, the county specified is detached from the regional airport authority. Such order shall further itemize the total bonded, warrant, and other indebtedness of the regional airport authority existing as of the date of such election, and shall order that the county detached from the authority is, and shall remain, liable for the percentage of such indebtedness previously determined by the order of the Idaho transportation department ordering such election, and such detached county shall thereafter remain liable to the regional airport authority for the amount determined by applying the percentage so determined to the existing indebtedness so determined.

(10) Notwithstanding the detachment of such county from the regional airport authority, the board of trustees of the regional airport authority shall annually thereafter, until the full amount owing by such detached county is paid, determine and certify annually to the board of county commissioners of such detached county the dollar amount necessary to be raised by an ad valorem tax on all property within the county to pay such detached county's share of all bonded, warrant, and other indebtedness existing as of the date of the election approving such detachment as herein set forth. The county commissioners of such detached county shall thereafter compute the amount of ad valorem tax necessary to raise the amount so certified and shall levy and collect such tax in the same manner as other ad valorem taxes levied by the county. After such detachment the detached county and the property therein shall not be subject to taxation by the

regional airport authority for the future operations of the regional airport authority or for the repayment of any indebtedness incurred by the authority subsequent to the date of the election approving such detachment.

(11) Nothing in this act shall be construed as impairing the validity of any bonds or warrants of the regional airport authority outstanding at the time of the detachment of any county therefrom pursuant to the provisions of this section; nor shall the detachment of any county from the regional airport authority pursuant to the provisions of this section in any way affect the rights of holders of general obligation bonds issued by the regional airport authority at any time when the detached county was a participating member of the regional airport authority.

(12) From and after entry of the order of detachment by the Idaho transportation department the office of trustee of any trustee elected from a legislative district lying wholly within such detached county shall terminate, and the trustee occupying such office shall thereafter have no authority to sit as a member of the board of trustees of the authority. Any trustee elected from a legislative district lying partly within such detached county and partly within other counties remaining within the authority shall retain his office as a member of the board of trustees of the authority, but shall from the date of the entry of the order by the Idaho transportation department ordering such detachment represent only that area in the legislative district from which he was elected which lies within counties remaining in the authority after such detachment. [I.C., § 21-805B, as added by 1979, ch. 127, § 1, p. 391; am. 1995, ch. 118, § 3, p. 417.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" in subdivision (11), refer to S.L. 1979, ch. 127, § 1, compiled as this section.

21-806. Election of board of trustees. [Effective until January 1, 2011.] — At the next succeeding primary election following the creation of any such regional airport authority, the electors of each of the legislative districts within the participating counties within such region shall elect, on a nonpartisan basis, a member of the authority's permanent board of trustees, hereinafter referred to as the board, except that in the northern and north central regions, one (1) additional board member shall be elected from each such region at large. At the first such election, members elected from even-numbered legislative districts, together with the member elected at large from the northern region and the member elected at large from the north central region, shall be elected for four (4) year terms of office, and members elected from odd-numbered legislative districts shall be elected for two (2) year terms of office. Thereafter all such members shall be elected for four (4) year terms of office, and shall serve until their successors are elected and qualified. The term of office of members so elected shall commence on December 1 of the year in which they were elected.

Notice of the election and the conduct thereof shall be as prescribed in chapter 14, title 34, Idaho Code. As a condition of voting, an elector shall

meet the qualifications prescribed in section 34-402, Idaho Code, and in addition shall be a resident of the regional airport authority.

In any election for member of the board, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that only one (1) qualified candidate has been nominated for that office, it shall not be necessary for the candidate to stand for election and the board shall declare such candidate elected as a member of the board and the secretary of the district shall immediately make and deliver to such person a certificate of election.

The person receiving the largest number of votes shall be declared elected. If it be necessary to resolve a tie between two (2) or more persons, the interim board or the permanent board, as the case may be, shall determine by lot which thereof shall be declared elected. The clerk of the board shall promptly notify any person by mail of his election, enclosing a form of oath to be subscribed by him as herein provided.

When elections held pursuant to this section coincide with other elections held by the state of Idaho or any subdivision thereof, or any municipality or school district, the board of trustees may make agreement with the body holding such election for joint boards of election and the payment of fees and expenses of such boards of election on such proportionate basis as may be agreed upon.

Elections of board members shall, after the first such election, be held every other year in even-numbered years, and shall be held on such uniform day consistent with the provisions of section 34-106, Idaho Code, as the board shall determine. Vacancies on the board shall be filled by appointment of remaining members, for the expiration of such term of office. The board members shall take and subscribe the oath of office required in the case of state officers and said oath shall be filed with the secretary of state. Members shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties. [1967, ch. 277, § 6, p. 776; am. 1970, ch. 35, § 3, p. 73; am. 1995, ch. 118, § 4, p. 417.]

STATUTORY NOTES

Compiler's Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 21-806.

21-806. Election of board of trustees. [Effective January 1, 2011.]

— At the next succeeding primary election following the creation of any such regional airport authority, the electors of each of the legislative districts within the participating counties within such region shall elect, on a nonpartisan basis, a member of the authority's permanent board of trustees, hereinafter referred to as the board, except that in the northern and north central regions, one (1) additional board member shall be elected from each such region at large. At the first such election, members elected from even-numbered legislative districts, together with the member elected at large from the northern region and the member elected at large from the north central region, shall be elected for four (4) year terms of office, and

members elected from odd-numbered legislative districts shall be elected for two (2) year terms of office. Thereafter all such members shall be elected for four (4) year terms of office, and shall serve until their successors are elected and qualified. The term of office of members so elected shall commence on December 1 of the year in which they were elected.

Notice of the election and the conduct thereof shall be as prescribed in chapter 14, title 34, Idaho Code. As a condition of voting, an elector shall meet the qualifications prescribed in section 34-402, Idaho Code, and in addition shall be a resident of the regional airport authority.

In any election for member of the board, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that only one (1) qualified candidate has been nominated for that office, it shall not be necessary for the candidate to stand for election and the board shall declare such candidate elected as a member of the board and the secretary of the district shall immediately make and deliver to such person a certificate of election.

The person receiving the largest number of votes shall be declared elected. If it be necessary to resolve a tie between two (2) or more persons, the interim board or the permanent board, as the case may be, shall determine by lot which thereof shall be declared elected. The clerk of the board shall promptly notify any person by mail of his election, enclosing a form of oath to be subscribed by him as herein provided.

Elections held pursuant to this section shall coincide with other elections held by the state of Idaho or any subdivision thereof, or any municipality or school district, subject to the provisions of sections 34-106 and 34-1401, Idaho Code.

Elections of board members shall, after the first such election, be held every other year in even-numbered years, and shall be held on such uniform day consistent with the provisions of section 34-106, Idaho Code, as the board shall determine. Vacancies on the board shall be filled by appointment of remaining members, for the expiration of such term of office. The board members shall take and subscribe the oath of office required in the case of state officers and said oath shall be filed with the secretary of state. Members shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties. [1967, ch. 277, § 6, p. 776; am. 1970, ch. 35, § 3, p. 73; am. 1995, ch. 118, § 4, p. 417; am. 2009, ch. 341, § 3, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, rewrote the fifth paragraph providing for an election of a board of trustees of a regional airport authority.

Compiler's Notes. — For this section as

effective until January 1, 2011, see the preceding section, also numbered § 21-806.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

21-807. Powers of board. — The board of any authority established under the provisions of this act shall have power:

- (1) To sue and be sued;
- (2) To acquire, hold, and dispose of personal property;

(3) To acquire, in the name of the authority by purchase or condemnation, real property or rights or easements therein necessary or convenient for its purposes, and, except as may otherwise be provided herein, to use the same in acquiring property, any such authority may exercise the right of eminent domain as provided in chapter 7, title 7, Idaho Code;

(4) To establish rules and regulations for the management and regulation of its affairs, and to make rules and regulations for the use of projects, and the establishment and collection of rentals, fees, and all other charges for services or commodities sold, furnished, or supplied by such authority;

(5) To appoint a chairman from the membership of the board, and to appoint officers, agents, and employees and fix their compensation;

(6) To make contracts, leases, and all other instruments necessary or convenient to the purposes of the authority;

(7) To design, construct, maintain, operate, improve, and reconstruct such projects as shall be necessary and convenient to the maintenance and development of aviation services to and for the region in which such authority is established, including landing fields, heliports, hangars, shops, passenger and freight terminals, control towers, and all facilities necessary or convenient in connection with any such project and also to contract for the construction, operation, or maintenance of any parts thereof, or for services to be performed thereon, and to rent parts thereof and grant concessions thereon; all on such terms and conditions as the authority may determine;

(8) To include in such project, subject to zoning restrictions, space and facilities for any or all of the following: public recreation, business, trade or other exhibitions, sporting or athletic events, public meetings, conventions, and all other kinds of assemblages, and in order to obtain additional revenues, space, and facilities for business and commercial purposes. Whenever the board deems it to be in the public interest, the board may lease any such project or any part or parts thereof, or contract for the management and operation thereof or any part or parts thereof. Any such lease or contract may be for such period of years as the board shall determine;

(9) To charge fees, rentals, and other charges for the use of projects under the jurisdiction of such board. All fees, rentals, charges, and other revenues derived from any project shall be applied to the payment of operating, administration, and other necessary expenses of the authority properly chargeable to such project and to the payment of the interest on and principal of bonds or for making sinking fund payments therefor. The board may treat one (1) or more projects as a single enterprise in respect of revenues, expenses, the issuance of bonds, maintenance, operation, or other purposes;

(10) Subject to and consistent with the percentages of financial participation determined by the board and approved by the electors of the region, as provided in sections 21-804 and 21-805, Idaho Code, or as determined by the board as provided in subsection (14) of this section, to certify annually to the boards of county commissioners of the participating counties in the region the amount of tax to be levied to fund the ad valorem tax portion of the budget for the airport authority's purposes. The ad valorem tax portion

of the budget shall not exceed five hundredths percent (.05%) of market value for assessment purposes of the taxable property in such county, and the boards of county commissioners shall levy and collect the taxes to fund the ad valorem tax portion of the budget so certified at the same time and in the same manner as other county taxes are levied and collected, and the proceeds of such taxes when due and as collected shall be set aside and deposited in the special account or accounts in which other revenues of the authority are deposited;

(11) To construct and maintain under, along, over, or across a project, telephone, telegraph, or electric wires and cables, fuel lines, gas mains, water mains, and other mechanical equipment not inconsistent with the appropriate use of such project, to contract for such construction and to lease the right to construct and use the same, or to use the same on such terms for such periods of time and for such consideration as the board shall determine;

(12) To accept grants, loans, or contributions from the United States, the state of Idaho, or any agency or instrumentality of either of them, or from any private group or individual, and to expend the proceeds thereof consistent with the laws of the United States and of the state of Idaho;

(13) To enter on any lands, waters, and premises for the purposes of making surveys, soundings, and examinations; and to do all things necessary or convenient to carry out the powers expressly conferred on such authorities by this act;

(14) To determine the degree of financial participation of each county participating in the regional airport authority after such authority has been established as provided in section 21-805, Idaho Code. [1967, ch. 277, § 7, p. 776; am. 1970, ch. 35, § 4, p. 73; am. 1976, ch. 130, § 1, p. 491; am. 1978, ch. 370, § 1, p. 973; am. 1996, ch. 208, § 18, p. 658.]

STATUTORY NOTES

Cross References. — Transfers of property to other governmental agencies, §§ 67-2322 — 67-2325.

Compiler's Notes. — For words "this act," see Compiler's Notes, § 21-801.

Effective Dates. — Section 22 of S.L. 1996, ch. 208 declared an emergency and provided that this section should be in effect July 1, 1996. Approved March 12, 1996.

21-808. Issuance of bonds. — Subject to and consistent with the percentage of financial participation determined by the board and approved by the electors of the region, as provided in sections 21-804 and 21-805, Idaho Code, or as determined by the board as provided in section 21-807(14), Idaho Code, an authority may secure the necessary funds to finance part or all of the cost of acquiring, establishing, constructing, developing, expanding, extending or further improving the regional airport within its limits through the issuance of general obligation bonds as hereinafter provided, the principal amount of which at any one (1) time outstanding, shall not exceed six-tenths percent (.6%) of market value for assessment purposes of all property within the participating counties within the region. Provided further, all such bonds shall be payable within thirty (30) years from the date of issuance. [1967, ch. 277, § 8, p. 776; am. 1970, ch. 35, § 5, p. 73; am. 1978, ch. 369, § 1, p. 972; am. 1980, ch. 350, § 1, p. 887.]

21-809. Bond issue — Submission to electors for approval. — No general obligation bonds shall be issued until the question whether the bonds shall be issued is submitted to the qualified electors of the participating counties of the region and approved by a two-thirds (2/3) majority of those voting upon the question. As used in this section, “qualified elector” means a person entitled to vote in a school bond election. The question may be submitted at any general election or at a special election called for such purpose by the board of the authority. Notice of the submission of such proposition at any such election shall be published as provided in section 34-1406, Idaho Code. In all respects, procedures for such elections shall be in the same manner as provided in chapter 14, title 34, Idaho Code. The ballot to be voted at said election shall read substantially as follows:

Shall the Airport Authority	YES
be authorized to issue general obligation	
bonds in the amount of (fill in the amount)	NO
for the purpose of (state purpose)?	

If two-thirds (2/3) of the electors of the region voting upon such proposition vote in favor thereof, such bonds may be issued. [1967, ch. 277, § 9, p. 776; am. 1970, ch. 35, § 6, p. 73; am. 1995, ch. 118, § 5, p. 417.]

21-810. Records — Audits — Bonds. — The board shall provide for the proper and safe keeping of its permanent records and for the recording of the action of the authority. It shall keep a true and accurate account of its receipts and an annual audit shall be made of its books, records and accounts, as required in section 67-450B, Idaho Code. All officers and employees authorized to receive or retain the custody of money or to sign vouchers, checks, warrants or evidence of indebtedness binding upon the authority shall furnish surety bond for the faithful performance of their duties and the faithful accounting for all moneys that may come into their hands in an amount to be fixed and in a form to be approved by the board. [1967, ch. 277, § 10, p. 776; am. 1993, ch. 387, § 2, p. 1417.]

21-811. Purpose — Exemption from taxation. — It is hereby found, determined, and declared that the creation of a regional airport authority is in all respects for the benefit of the people of the state of Idaho, for the improvement of their welfare and prosperity, and for the promotion of their transportation, and is a public purpose and a matter of statewide concern, and that projects operated by authorities are essential parts of the public transportation system, and that such authorities will be performing essential governmental functions in the exercise of the powers conferred upon them by this act. The state of Idaho declared that authorities shall be required to pay no taxes or assessments upon any of the property acquired by them or under their respective jurisdictions, control, possession, or supervision, or upon the activities of authorities in the operation and maintenance of projects, or upon any charges, fees, revenues, or other income received by authorities except motor vehicle fuel and aviation fuel

taxes, and that the bonds and notes of authorities and the income therefrom shall at all times be exempt from taxation. [1967, ch. 277, § 11, p. 776.]

STATUTORY NOTES

Compiler's Notes. — For words “this act”, see Compiler's Notes, § 21-801.

Section 12 of S.L. 1967, ch. 277 provided as follows: “The provisions of this act are hereby declared to be severable and if any provisions of this act or the application of such provision to any person or circumstance is declared

invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.”

Effective Dates. — Section 13 of S.L. 1967, ch. 277 provided that it was to become effective on July 1, 1967.

21-812. Issuance of revenue bonds. — Regional airport authorities may issue revenue bonds in the same manner and form as under the municipal bond law contained in chapter 10, title 50, Idaho Code; provided that the ordinance required therein shall be by resolution of the board of trustees. For the purpose of this section, the term “city” in the municipal bond law shall include the term “regional airport authority.” [I.C., § 21-812, as added by 1976, ch. 128, § 1, p. 487.]

21-813. [Reserved.]

21-814. Dissolution of authority. — A regional airport authority shall be, or may be, dissolved in accordance with the provisions herein provided:

(a) If following the withdrawal pursuant to the provisions of section 21-805B, Idaho Code, of any county from a previously organized regional airport authority there shall remain in such authority less than three (3) counties, such regional airport authority shall be dissolved in accordance with the provisions herein set forth in subsection (b) of this section in the same manner as though the election for dissolution therein specified had been held and approved.

(b) The board of trustees of any regional airport authority may, at any regularly scheduled meeting, approve by majority vote, the calling of an election within the counties comprising the authority, to determine whether or not the regional airport authority should be dissolved, upon a finding by a majority of the board that there no longer exists any worthwhile reason for the regional airport authority's continuing in existence.

(1) Upon the determination by majority vote that it desires to call an election to determine whether or not the regional airport authority should be dissolved, the board of trustees of such authority shall further determine the percentage that the assessed valuation of each county within the authority bears to the total assessed valuation of all counties within the authority, based upon the assessed valuation used in the authority's last certification of dollar amounts to the counties for ad valorem tax purposes, and shall forward to the Idaho transportation department the boards of trustees' certification that such dissolution election has been called for and the board's computation of the percentage that the assessed valuation of each county within the authority bears to the total assessed valuation of all counties within the authority.

(2) Upon receiving such certification from the board of trustees of the regional airport authority, the Idaho transportation department shall within ten (10) days from receipt thereof enter an order directing the county commissioners of each of the counties within such regional airport authority to hold an election upon the date of the next election held pursuant to section 34-106, Idaho Code, following such order for the purpose of determining whether or not the regional airport authority should be dissolved. Such order shall specify the percentage that the assessment valuation of each county within the authority bears to the total assessed valuation of all counties within the authority, as determined by the board of trustees, and shall direct that the notice of election and questions to be submitted to the voters shall indicate that if dissolution be approved, each of the counties shall remain liable for such counties' respective percentage of all bonded, warrant, and other indebtedness existing at the time of dissolution, or thereafter incurred for the purposes of winding up the affairs of the authority.

(3) Upon receipt of such order from the Idaho transportation department, the county commissioners of each county within the regional airport authority shall enter an order directing that an election shall be held within such county on the date specified in such order to determine whether or not the regional airport authority shall be dissolved. Such election shall be conducted in the manner set forth in subsections (6) and (7), section 21-805B, Idaho Code, except that the notice of election and the question submitted to the voters shall specify that the question to be determined is whether or not the regional airport authority should be dissolved, rather than whether or not a specified county should withdraw from the authority.

(4) At the next regularly scheduled meeting following such election, the boards of county commissioners of the respective counties, having held such elections shall canvass and certify the results thereof to the Idaho transportation department and the regional airport authority.

(5) If a majority of all of the voters voting at such elections in all of the counties within the regional airport authority shall vote in the affirmative for the dissolution of the regional airport authority, the board of trustees of the regional airport authority at their next regular meeting following receipt of certification of such election results to them by the respective boards of county commissioners shall determine the total amount of all bonded, warrant, and other indebtedness of the authority existing as of the date of such election, and shall certify the amounts of all such indebtednesses and to whom owed to the Idaho transportation department within ten (10) days following such meeting. If the certification from the county commissioners shall indicate that a majority of the voters in all of the counties voting at such election have voted in the negative on the question of whether the authority should be dissolved, the board of trustees need not make such determination or certification to the Idaho transportation department.

(6) If the Idaho transportation department receives a certification from the county commissioners of each of the respective counties that such

election has been held, and the votes thereof canvassed, and it appears from such certifications that a majority of all of the persons voting at such elections within all such counties have voted in the affirmative to have the regional airport authority dissolved, the Idaho transportation department shall upon receipt of certification from the board of trustees of the regional airport authority of the amount of bonded, warrant, and other indebtedness of the authority existing as of the date of such election, enter and deliver to the respective county commissioners of each county within such authority an order that a majority having voted for dissolution of the regional airport authority it is dissolved. Such order shall further itemize the total bonded, warrant, and other indebtedness of the regional airport authority existing as of the date of such dissolution, and shall order that each county within the authority, including any that may still owe a portion of the liability after having previously withdrawn, shall remain liable for the percentage of such indebtedness previously determined by the order of the transportation department and each such county shall thereafter remain liable to the regional airport authority for the amount determined by applying the percentages so determined to the existing indebtedness so determined together with any other necessary expenses which may thereafter be incurred for the purpose of winding up the business of the regional airport authority.

(7) After the entry of such order of dissolution by the Idaho transportation department, the board of trustees of the regional airport authority shall have no right or authority to incur any additional expenses in conducting and carrying on the business of the authority except those necessary to wind up the affairs of the authority. In winding up the affairs of the authority, the board of trustees shall continue to exercise all of the rights and powers granted to them by law to the extent necessary to wind up the authority's affairs including the right to determine and certify annually to the respective boards of county commissioners of the counties obligated to pay therefor under the order of the Idaho transportation department the dollar amounts necessary to be raised by ad valorem taxes on all property within such counties to pay such counties' share of all bonded, warrant, and other indebtednesses existing as of the date of the dissolution of such authority, and all necessary expenses incurred thereafter in winding up the affairs of the authority. The county commissioners of each such county shall thereafter compute the amount of ad valorem tax necessary to raise the amount so certified and shall levy and collect such taxes in the same manner as other ad valorem taxes levied by the county.

(8) When all bonded, warrant, and other indebtednesses of the regional airport authority existing as of the date of the dissolution of election have been paid, together with all necessary expenses incurred in winding up the affairs thereof, the board of trustees of the regional airport authority shall refund to the counties having constituted such authority each county's pro rata share of any money or other assets of the authority which have not been disbursed; such pro rata share to be based upon the same percentage that the counties were required to pay upon the indebtednesses of the regional airport authority in winding up its affairs.

(9) Upon completion of the winding up of the affairs of the regional airport authority, the board of trustees thereof shall certify such fact to the Idaho transportation department; and upon receipt of such certification the Idaho transportation department shall enter and forward to the counties its order that the affairs of the regional airport authority have been wound up; that the board of trustees of the regional airport authority is dissolved; and that all powers of the board of trustees are terminated as of the date of such order.

(10) All dollar certification amounts previously certified to the counties included within the regional airport authority prior to its dissolution which remain uncollected or undisbursed to the regional airport authority at the time of the entry of the order by the Idaho transportation department winding up the affairs of the regional airport authority and terminating its board of trustees shall be retained by such counties and placed in their general fund.

(11) Nothing in this act shall be construed as impairing the validity of any bonds or warrants of the regional airport authority outstanding at the time of the entry of the order of dissolution of the authority by the Idaho transportation department pursuant to the provisions of this section; nor shall the dissolution of the regional airport authority pursuant to the provisions of this section in any way affect the rights of holders of general obligation bonds issued by the regional airport authority prior to the time of the entry of such order of dissolution. [I.C., § 21-814, as added by 1979, ch. 128, § 1, p. 395; am. 1995, ch. 118, § 6, p. 417.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1979, ch. 128, compiled as this section.

TITLE 22

AGRICULTURE AND HORTICULTURE

CHAPTER.

1. DEPARTMENT OF AGRICULTURE, §§ 22-101 — 22-112.
2. COUNTY FAIR BOARDS, §§ 22-201 — 22-209.
3. FAIR DISTRICTS IN TWO OR MORE COUNTIES, §§ 22-301 — 22-310.
4. PURE SEED LAW, §§ 22-401 — 22-436.
5. SEED POTATOES, §§ 22-501 — 22-510.
6. COMMERCIAL FERTILIZERS, §§ 22-601 — 22-626.
7. FARM MARKETING, §§ 22-701 — 22-707.
8. FRUITS — MARKING AND INSPECTION, §§ 22-801 — 22-804.
9. POTATOES — GRADING AND PACKING, §§ 22-901 — 22-914.
10. CROP MANAGEMENT AREAS. [REPEALED.]
11. ORGANIC FOOD PRODUCTS, §§ 22-1101 — 22-1117.
12. POTATO COMMISSION, §§ 22-1201 — 22-1215.
13. DEALERS IN FARM PRODUCE. [REPEALED.]
14. CHEMIGATION. [REPEALED.]
15. SEED AND PLANT CERTIFICATION, §§ 22-1501 — 22-1511.
16. PREVENTION OF PRICE DISCRIMINATION, §§ 22-1601 — 22-1606.
17. PREVENTION OF FRAUD IN SACKED PRODUCTS. [REPEALED.]
18. IDAHO STATE PESTICIDE MANAGEMENT COMMISSION, §§ 22-1801 — 22-1805.
19. THE IDAHO INVASIVE SPECIES ACT OF 2008, §§ 22-1901 — 22-1917.
20. IDAHO PLANT PEST ACT OF 2002, §§ 22-2001 — 22-2023.
21. PLANT PEST CONTROL AND RESEARCH COMMISSION. [REPEALED.]
22. SOIL AND PLANT AMENDMENTS, §§ 22-2201 — 22-2226.
23. NURSERIES AND FLORISTS, §§ 22-2301 — 22-2325.
24. NOXIOUS WEEDS, §§ 22-2401 — 22-2488.
25. BEE INSPECTION, §§ 22-2501 — 22-2540.
26. COOPERATIVE MARKETING ASSOCIATIONS, §§ 22-2601 — 22-2628.
27. SOIL CONSERVATION DISTRICTS, §§ 22-2701 — 22-2735.
28. HONEY INDUSTRY, §§ 22-2801 — 22-2811.

CHAPTER.

29. BEANS — PROMOTION OF INDUSTRY, §§ 22-2901 — 22-2923.
30. PRUNES — PROMOTION OF INDUSTRY. [REPEALED.]
31. HOPS — PROMOTION OF INDUSTRY, §§ 22-3101 — 22-3117.
32. RAINFALL — ARTIFICIAL PRODUCTION, §§ 22-3201, 22-3202.
33. WHEAT — PROMOTION OF MARKETING, §§ 22-3301 — 22-3319.
34. PESTICIDES AND CHEMIGATION, §§ 22-3401 — 22-3426.
35. PEA AND LENTIL COMMISSION, §§ 22-3501 — 22-3518.
36. APPLE COMMISSION, §§ 22-3601 — 22-3616.
37. CHERRY COMMISSION, §§ 22-3701 — 22-3716.
38. MINT INDUSTRY ACT, §§ 22-3801 — 22-3816.
39. DEDUCTION OF DUES TO GROWER OR PRODUCER ORGANIZATIONS, §§ 22-3901 — 22-3906.
40. BARLEY — PROMOTION OF MARKETING, §§ 22-4001 — 22-4019.
41. AGRICULTURAL LABOR LAW. [REPEALED.]
42. ALFALFA AND CLOVER SEED INDUSTRIES, §§ 22-4201 — 22-4218.
43. WEATHER MODIFICATION DISTRICTS, §§ 22-4301, 22-4302.
44. IDAHO AQUACULTURE COMMISSION, §§ 22-4401 — 22-4409.
45. RIGHT TO FARM, §§ 22-4501 — 22-4504.
46. COMMERCIAL FISH FACILITIES, §§ 22-4601 — 22-4605.
47. IDAHO OILSEED RESEARCH AND DEVELOPMENT ACT, §§ 22-4701 — 22-4722.
48. SMOKE MANAGEMENT AND CROP RESIDUE DISPOSAL. [REPEALED.]
49. BEEF CATTLE ENVIRONMENTAL CONTROL ACT, §§ 22-4901 — 22-4910.
50. CROP PRODUCT DESTRUCTION, § 22-5001.
51. SEED INDEMNITY FUND LAW, §§ 22-5101 — 22-5129.
52. CARBON SEQUESTRATION ADVISORY COMMITTEE, §§ 22-5201 — 22-5206.

CHAPTER 1

DEPARTMENT OF AGRICULTURE

SECTION.

- 22-101. Department created — Appointment of director — Rules.
 22-102. Organization of department — Divisions.
 22-102A. Aircraft use in controlling unprotected or predatory animals.
 22-103. Duties of director.
 22-104. Agriculture department inspection account — Other accounts.
 22-105. Agricultural department inspection fund — Continuing appropriation.

SECTION.

- 22-106. Injunction.
 22-107. Voluntary services for public — Fees — Appropriation of moneys.
 22-108. Authority and duties of director concerning rapeseed.
 22-109. Quality assurance laboratory program — Mandatory assessment referendum authority.
 22-110. Authority and duties of director concerning agricultural waste.
 22-112. Promotion and certification of Idaho agricultural products.

22-101. Department created — Appointment of director — Rules.

— (1) There is hereby created the department of agriculture. The governor shall appoint a director of the department of agriculture, subject to the provisions of section 67-2404, Idaho Code. The director of the department of agriculture shall exercise all of the powers and duties necessary to carry out the proper administration of the department of agriculture. The department of agriculture shall, for the purposes of section 20, article IV, of the constitution of the state of Idaho, be an executive department of the state government.

(2) The director shall be a person who is qualified by training, knowledge and demonstrated ability or experience in agricultural pursuits and their management.

(3) The director is empowered to prescribe rules pursuant to law for the governance of the department.

(4) For the purposes of international trade, the director may use the title of secretary of the department. [1974, ch. 18, § 2, p. 364; am. 2000, ch. 144, § 1, p. 373.]

STATUTORY NOTES

Cross References. — Repurchase of farm machinery, implements, attachments and parts, § 28-23-101 et seq.

Prior Laws. — Former §§ 22-101 — 22-

103, which comprised R.S., R.C., & C.L., § 3037; C.S., § 4898; I.C.A., § 22-101, were repealed by S.L. 1974, ch. 18, § 1, p. 364.

22-102. Organization of department — Divisions. — The director shall organize the department into such divisions and other administrative subunits as may be necessary in order to efficiently administer the department. The director may apportion duties and responsibilities among the divisions and subordinate units. [1974, ch. 18, § 2, p. 364; am. 1981, ch. 40, § 1, p. 62.]

STATUTORY NOTES

Prior Laws. — Former § 22-102 was repealed. See Prior Laws, § 22-101.

22-102A. Aircraft use in controlling unprotected or predatory animals. — The director of the department of agriculture is hereby designated as the authorized agent of this state to aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life or crops for the purposes of issuing permits to persons to shoot or attempt to shoot, capture, harass or kill unprotected or predatory animals, as designated by the director, while such person is airborne in an aircraft, under authority vested in such agency by public laws 92-159 and 92-502.

The director shall issue such permits to applicants at no charge and shall require each permittee to submit a report each calendar quarter. The director also shall file with the United States secretary of the interior an annual report as prescribed in public laws 92-159 and 92-502.

The director is authorized to promulgate such regulations as may be necessary for the effective administration of this subsection [section]. Any violation of such regulations shall constitute a civil offense for which a civil penalty of not to exceed one thousand dollars (\$1,000) may be imposed per incident of violation. [I.C., § 36-1106, as added by 1976, ch. 95, § 2, p. 315; am and redesign. 1989, ch. 211, § 1, p. 520.]

STATUTORY NOTES

Federal References. — Public Laws 92-159 and 92-502, referred to in this section, are compiled as 16 U.S.C. § 742j-1.

The bracketed insertion in the last paragraph was added by the compiler.

Compiler's Notes. — This section was formerly compiled as § 36-1106.

22-103. Duties of director. — The director of the department of agriculture shall execute the powers and discharge the duties vested by law in him or in the department, including, but not limited to, the following:

(1) Pursuant to chapter 53, title 67, Idaho Code, hire, assign duties and evaluate the performance of all employees of the department.

(2) Designate employees for special assignment, office or function as the needs of the department may require.

(3) Acquire, generate, develop and disseminate information and data concerning agricultural pursuits, productivity and product quality.

(4) Encourage and promote in every practical manner, the interests of agriculture, horticulture, apiculture, aquaculture, the livestock industries, poultry and fowl raising, wool and fur-bearing animals and their allied industries.

(5) Assist, encourage and promote the organization of farmers' institutes, agricultural, horticultural, management or cooperative societies and organizations for the benefit of agricultural pursuits in this state.

(6) Promote improved methods of production, storage, sales and marketing of agricultural industries.

(7) Establish and promulgate standards of construction, use and sanitation of open and closed receptacles for farm products, and standards for grade or other classification of farm products.

(8) Prescribe and promulgate rules governing marks, brands and labels, and the registration thereof, for use upon receptacles for farm products.

(9) Promote, in the interest of the public, economical and efficient use of products and commodities used in the production of agricultural, horticultural, meats and other products and farm commodities and their distribution.

(10) Cooperate with producers, processors and consumers in devising and maintaining economical and efficient systems of distribution, and to assist in the reduction of waste and expense incidental to the marketing of agricultural products.

(11) Support a market news service to gather and diffuse timely information and statistics concerning supply, demand, prevailing prices and commercial movement of agricultural products.

(12) Cooperate with the secretary, colleges and universities, experiment stations, and other agencies which cooperate in devising, research and development and utilization of improved agricultural production and other activities.

(13) Investigate the practices, methods of factors, management techniques of commission merchants, track buyers and others who receive, solicit, buy, sell, handle on commission or otherwise, or deal in grains, eggs, livestock, vegetables or other products used as human foods, to the end that distribution of such commodities through such factors, commission merchants, track buyers and others be efficiently and economically accomplished without hardship, waste or fraud.

(14) Enter and inspect any right-of-way of any irrigation canal, railway, public highway, field, orchard, nursery, fruit or vegetable packing house, store room, sales room, storage facility, depot or other place where fruits and vegetables are grown or stored and to inspect fruits, trees, plants, vines, shrubs or other articles within the state, and if such places or articles are infested with pests, insects or their eggs or larvae, or with any contagious or transmittable diseases injurious to plant life, to abate or eradicate the same as a nuisance.

(15) Provide treatment for and prevent the spread of infectious or communicable diseases among bees, livestock, fur-bearing animals or domestic animals through the systematic and periodic inspection, testing or treatment of such bees and animals at the expense of the owner thereof.

(16) Protect the livestock interests of the state from losses due to disease or hazards to animal health and communicable to humans through agricultural products. The director is authorized to regulate, as deemed necessary, commercial livestock truck washing facilities. This includes permitting for the treatment or disposal, at any location, of any wash water generated by the facility. This subsection preempts Idaho department of environmental quality's authority to issue land application permits and to do plan and specification reviews under section 39-118, Idaho Code, for livestock truck wash facilities, but does not affect any other authority of the Idaho department of environmental quality.

(17) Maintain recording of earmarks, eartags or other identifying marks not covered under any other provisions of law.

(18) Purchase, lease, hold, sell, and dispose of real and personal property of the department when, in the judgment of the director, such transactions promote the purposes for which the department is established.

(19) Contract with any state agency, federal agency or agency of another state concerning any matter, program or cooperative effort within the scope and jurisdiction of its authority pursuant to law.

(20) Assist in the improvement of country life, farm occupations and to cooperate in effectuating equality of opportunity of those employed in agricultural pursuits in the state of Idaho.

(21) Investigate diseases, contamination of livestock and poultry, agricultural, horticultural, and farm products, suspected to be infected or contaminated by bacterial, viral, protozoal, parasitic, chemical, nuclear, botanical or other disease-producing agents, or carrying a residue of any such disease-producing agent or chemical in excess of any tolerance established by federal or state law or regulation and to examine, conduct tests, and issue "hold orders" on any livestock, poultry, agricultural, horticultural or farm products as deemed necessary to effectuate a diagnosis of disease, contamination or chemical level to safeguard and protect animal and man. And additionally, authorize and implement a predator control program on state and private lands using any kind of toxic material or substance suitable for such purpose. Any toxic material or substance shall be approved for use by the director. In order to carry out the provisions of this subsection (21), the director shall prescribe and promulgate rules pursuant to chapter 52, title 67, Idaho Code.

(22) Prescribe by rule an interest charge which may be assessed on all accounts which are thirty (30) days past due from the initial billing date or the assessment due date. The interest rate charged shall not exceed twelve percent (12%) per annum.

(23) To take all steps that are deemed necessary to prevent and control damage or conflicts on federal, state, or other public or private lands caused by predatory animals, rodents, or birds, including threatened or endangered wildlife within the state of Idaho as are established by federal or state law, federal or state regulation, or county ordinance, that are injurious to animal husbandry, agriculture, horticulture, forestry, wildlife and human health and safety.

(25) Administer a range program to provide support, coordination and expertise to Idaho rangeland livestock producers and land and wildlife management agencies for the planning and management of vegetation, grazing permits and other rangeland resources that are of importance to the livestock industry. The program shall also provide technical expertise and support to state and industry entities in reviewing various federal environmental impact statements, federal environmental assessments and other state and federal proposals that impact grazing, vegetation management or other rangeland resources or uses important to the livestock industry.

[(26)](24) To administer oaths, certify to all official acts and subpoena any person in this state as a witness; to compel through subpoena the production of books, papers, and records; and to take the testimony of any person on deposition in the same manner as prescribed by law in the procedure before

the courts of this state. A subpoena issued by the director shall extend to all parts of the state and may be served by any person authorized to do so. All powers of the director enumerated in this subsection [(26)](24) with respect to administering oaths, power of subpoena, and other powers in hearings on complaints shall likewise be applicable to hearings held on applications for the issuance or renewal of licenses.

[(27)](25) To appoint, as necessary, committees for the purpose of advising the director on any and all matters relating to agricultural programs within the Idaho department of agriculture.

[(28)](26) Cooperate with producers, industry and technology groups, and other agencies to encourage the growth of technology within the state's agricultural industries while protecting, as necessary, the integrity of existing agriculture and agricultural marketing channels. [1974, ch. 18, § 2, p. 364; am. 1976, ch. 90, § 1, p. 304; am. 1978, ch. 238, § 1, p. 508; am. 1982, ch. 9, § 1, p. 12; am. 1990, ch. 376, § 1, p. 1039; am. 1993, ch. 30, § 1, p. 98; am. 1994, ch. 96, § 1, p. 219; am. 1998, ch. 120, § 1, p. 448; am. 2002, ch. 104, § 1, p. 282; am. 2006, ch. 220, § 1, p. 657; am. 2009, ch. 32, § 1, p. 87; am. 2009, ch. 123, § 1, p. 388.]

STATUTORY NOTES

Cross References. — Department of environmental quality, § 39-104.

Prior Laws. — Former § 22-103 was repealed. See Prior Laws, § 22-101.

Amendments. — The 2006 amendment, by ch. 220, added subsection (27).

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 32, in subsection (11), added "Support a market news service to"; deleted subsection (12), which read: "Maintain a market news service, including information concerning crops, freight rates, commission rates and such other information as may be of service to producers and consum-

ers, and to act as a clearinghouse for information between producers and consumers" and redesignated the subsequent subsections accordingly.

The 2009 amendment, by ch. 123, added subsection (25) and redesignated the subsequent subsections accordingly.

Compiler's Notes. — Because of the resolution of the multiple amendments of the section in 2009, this section does not contain a subsection (24).

Effective Dates. — Section 2 of S.L. 2002, ch. 104 declared an emergency. Approved March 19, 2002.

Section 2 of S.L. 2006, ch. 220 declared an emergency. Approved March 30, 2006.

22-104. Agriculture department inspection account — Other accounts. — (1) All moneys received by the department of agriculture for any inspection, which the department by law may be authorized or required to make, except those moneys specifically received for and credited to another account or accounts, shall be credited to the agriculture department inspection account, which is hereby created in the treasury of the state of Idaho.

(2) Moneys received by the division of animal industries for sales of licenses, for inspections or fines shall be deposited to the livestock disease control and T.B. indemnity account.

(3) Moneys received by the department of agriculture under the bonded warehouse law and the weightmaster's [weighmaster's] licensing act shall be deposited to the credit of the general account. [1974, ch. 18, § 2, p. 364; am. 1988, ch. 115, § 1, p. 211.]

STATUTORY NOTES

Cross References. — Bonded warehouse law, § 69-201 et seq.

Livestock disease control and T.B. indemnity fund, § 25-233.

Weighmaster's licensing act, § 71-401 et seq.

Compiler's Notes. — The bracketed insertion in subsection (3) was added by the compiler to correct the reference.

22-105. Agricultural department inspection fund — Continuing appropriation. — All moneys coming into the said agricultural department inspection fund from whatever source are hereby appropriated and set aside for the uses and purposes of the department of agriculture, including administrative expenses of the department, salaries and/or wages of the director and of subordinates and employees, expenses of travel, communication, supplies, equipment, fixed charges, inspection, and all other necessary expenses of the department of agriculture in carrying out its functions and the duties enjoined on it by law, not otherwise provided for, and this appropriation is intended as a continuing appropriation of said fund for the uses and purposes herein mentioned; and all claims against the said agricultural department inspection fund shall be examined by said department of agriculture and certified to the state controller, who shall, upon the approval of the board of examiners, draw his warrant against said agricultural department inspection fund for all bills and claims so allowed by said department of agriculture. [1974, ch. 18, § 2, p. 364; am. 1994, ch. 180, § 13, p. 420.]

STATUTORY NOTES

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to

state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 13 of S.L. 1994, ch. 180 became effective January 2, 1995.

22-106. Injunction. — In addition to the other remedies, criminal or civil, provided by law, the department of agriculture may apply to the district courts for, and the district courts are vested with, civil jurisdiction to enforce, prevent, restrain or enjoin violations of any provision of a law or regulation made pursuant thereto under the jurisdiction of the department of agriculture. [1974, ch. 18, § 2, p. 364.]

22-107. Voluntary services for public — Fees — Appropriation of moneys. — The department of agriculture may after notice and hearing provide by rule for voluntary services to be performed by it at the request of the public, such as developing and implementing services relating to hazard controls, good manufacturing practices, food safety manuals for packhouse operations, sanitation standards and operating procedures for producers and packers, laboratory analyses and testing, inspecting, grading, sampling and all similar things. It may also provide for reasonable fees for performing such voluntary services; the moneys derived from this activity shall be

received and handled as provided for by sections 67-3609 and 67-3611, Idaho Code. The department of agriculture may also receive and use as directed any donations, grants or federal funds available for such purposes to be accounted for as prescribed by the state controller and any such moneys the department receives are hereby appropriated for the purpose for which they are received only, and may be spent for such purposes by the department of agriculture. [1974, ch. 18, § 2, p. 364; am. 1976, ch. 51, § 4, p. 152; am. 1994, ch. 180, § 14, p. 420; am. 2001, ch. 146, § 1, p. 515.]

STATUTORY NOTES

Effective Dates. — Section 263 of S.L. 1974, ch. 18 provided that the act should take effect on and after July 1, 1974.

Section 21 of S.L. 1976, ch. 51, provided that the act should be in full force and effect on and after July 1, 1977.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [Jan-

uary 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 14 of S.L. 1994, ch. 180 became effective January 2, 1995.

22-108. Authority and duties of director concerning rapeseed. —

(1) In addition to other powers and duties, the director of the department of agriculture shall have regulatory authority to specify the varieties of rapeseed produced in the state and the geographical locations where each variety may be produced or stored. The director shall promulgate rules and regulations in compliance with chapter 52, title 67, Idaho Code, that may be necessary for the efficient enforcement of the provisions of this section and may prescribe grade and quality standards for rapeseed.

(2) The director may, by rule and regulation, establish a schedule of fees for services performed by the department in the administration of this section and rules and regulations promulgated pursuant thereto, and the director may levy a fee on each hundredweight of rapeseed produced in this state sufficient to defray the costs of administering the provisions of this section and rules and regulations promulgated pursuant thereto. Receipts of these fees shall be deposited in the agricultural inspection account created pursuant to section 22-105 [22-104], Idaho Code, and shall be used, subject to annual appropriation of the legislature, to pay the cost of administering the provisions of this section and rules and regulations promulgated pursuant thereto.

(3) Every violation of the provisions of this section and any rules and regulations promulgated pursuant thereto shall be a misdemeanor and shall be punished by a fine not exceeding one thousand dollars (\$1,000). [I.C., § 22-108, as added by 1986, ch. 249, § 1, p. 670.]

STATUTORY NOTES

Compiler's Notes. — The bracketed reference "§ 22-104" in subsection (2) was inserted by the compiler since the agriculture department inspection account was created by § 22-104, and not § 22-105.

Effective Dates. — Section 2 of S.L. 1986, ch. 249 declared an emergency. Approved April 4, 1986.

22-109. Quality assurance laboratory program — Mandatory assessment referendum authority. — (1) In addition to the authority of commodity commissions to levy assessments and conduct referendums, if the department of agriculture receives a petition requesting a referendum signed by ten per cent (10%) or more Idaho producers of a particular commodity or if the department of agriculture receives a written request for a referendum from a commodity commission, the department of agriculture may provide for a referendum by a commodity to determine if a mandatory assessment should be levied on the commodity producer group for the specific quality assurance laboratory program purposes identified in the referendum. No assessment shall become effective unless the same shall first be referred on a referendum mail ballot to producers of that commodity in this state and is approved by a majority of the producers voting in the referendum.

(2) All moneys derived from the assessment and collected by a commodity commission shall be deposited in one (1) or more separate accounts in the name of the commission in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the specific purposes identified in the referendum.

(3) All moneys derived from the assessment and collected by the department of agriculture shall be deposited with the state treasurer and be credited to the agriculture department inspection account. All funds so deposited are hereby continuously appropriated for the specific purposes identified in the referendum.

(4) The department of agriculture shall be reimbursed for the costs of the referendum by moneys derived from the assessment.

(5) The director of the department of agriculture shall have the authority to implement the provisions of any approved referendum and may promulgate rules necessary for carrying out the purposes of this section. [I.C., § 22-109, as added by 1992, ch. 79, § 1, p. 220.]

STATUTORY NOTES

Cross References. — Agriculture department inspection account, § 22-104.

22-110. Authority and duties of director concerning agricultural waste. — (1) In addition to other powers and duties, the director of the state department of agriculture shall have authority to regulate agricultural solid waste, agricultural composting and other similar agricultural activities to safeguard and protect animals, man and the environment. The director may promulgate rules in compliance with chapter 52, title 67, Idaho Code, that may be necessary for the efficient enforcement of the provisions of this section. The director may collaborate with any state agency, federal agency or other governmental entity in the development of rules promulgated pursuant to this section.

(2) The director may, by rule, establish a schedule of fees for services performed by the department in the administration of this section and rules promulgated pursuant thereto. Receipts of these fees shall be deposited in the agricultural inspection fund pursuant to section 22-104, Idaho Code, and shall be used, subject to annual appropriation of the legislature, to pay the cost of administering the provisions of this section and rules promulgated pursuant thereto.

(3) Any person violating the provisions of this section or rules promulgated pursuant thereto may be assessed a civil penalty by the department or its duly authorized agent of not more than three thousand dollars (\$3,000) for each offense and shall be liable for reasonable attorney's fees. Assessment of a civil penalty may be made in conjunction with any other department administrative action. No civil penalty may be assessed unless the person charged has been given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act, chapter 52, title 67, Idaho Code. If the department is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court. Any person against whom the department has assessed a civil penalty under this section may, within twenty-eight (28) days of the final agency action making the assessment, seek judicial review of the assessment in accordance with the provisions of chapter 52, title 67, Idaho Code. Moneys collected for violations of this section or rules promulgated thereunder shall be deposited in the state treasury and credited to the agricultural inspection fund. When the director identifies items of noncompliance with the rules promulgated pursuant to this section, appropriate corrective actions will be identified. The director may develop a formal compliance schedule as appropriate to correct deficiencies. The director may, through the formal compliance schedule, allow all or part of the value of assessed civil penalties to be applied toward correction of deficiencies. [I.C., § 22-110, as added by 1998, ch. 417, § 1, p. 1314.]

22-112. Promotion and certification of Idaho agricultural products. — (1) Except as provided in subsection (2) of this section, the department of agriculture may promulgate rules in compliance with chapter 52, title 67, Idaho Code, for the purpose of assisting others in the domestic and international promotion and certification of Idaho agricultural products. Programs authorized by this section are for the purpose of promoting Idaho agricultural products and/or to certify that Idaho agricultural products meet required standards in order to move in commerce. Programs authorized by this section are to be funded by the assessment of fees directly related to the provision of voluntary services and programs authorized and provided by rules adopted pursuant to this section. Fees assessed and collected pursuant to rules adopted according to this section shall be deposited in the agricultural department inspection fund and subject to the provisions of section 22-105, Idaho Code.

(2) Commissions, boards, associations, or other organizations authorized by statute to promote or regulate agricultural products grown, packed, or

processed in the state of Idaho under Idaho law shall be the primary and principal promotion and certification mark and trademark organizations for the particular commodity they are authorized to promote or regulate. Any trademarks, certification marks, brands, seals, logos or other identification marks, whether registered or not, that are established, owned or used by such commissions, boards, associations or organizations shall remain their sole property, and any use or infringement of their ownership right is prohibited unless written permission is obtained from an authorized representative of the commission, board, association or organization.

(3) A commission, board, association or other organization referenced in subsection (2) of this section may, upon a request to and acceptance by the Idaho department of agriculture, participate in the promotion and certification programs administered by the department, including the payment of fees as required by rules adopted pursuant to subsection (1) of this section.

(4) Neither the Idaho department of agriculture, nor any agricultural entity referenced in subsection (2) of this section, shall be responsible for any negligent or other tortious act of the other while participating in a joint promotional activity. [I.C., § 22-112, as added by 2003, ch. 148, § 1, p. 425.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 2003, ch. 148 declared an emergency retroactively to May 1, 2003 and approved March 27, 2003.

CHAPTER 2

COUNTY FAIR BOARDS

SECTION.

22-201. Creation of county fair boards.

22-202. Hearing of objections — Order creating board — Appointment and selection of members.

22-202A. Designation of county fair board as advisory body.

22-203. Time for creation.

22-204. Duties of county fair board — Bonds of members — Meetings — Further duties.

22-205. Secretary and treasurer of county fair board.

SECTION.

22-206. Budget of funds for county fair purposes — Taxing unit under Idaho Budget Law — Maintenance of idle property.

22-207. Disposition of moneys remaining after fair conducted or awards paid.

22-208. Expenses of board members.

22-209. Police and fire protection for county fairs.

22-201. Creation of county fair boards. — County fair boards for the purpose of conducting county fairs may be created in the following manner: A petition signed by at least five (5) and not more than ten (10) persons, each of whom must be a qualified elector of the county may be filed with the clerk of the board of county commissioners of any county. Upon receipt of such petition the board of county commissioners shall immediately cause the clerk to give notice by publication in a newspaper of general circulation printed within the county, for not less than two (2) weeks, to the effect that a petition for the creation of a county fair board has been filed with the clerk of the board of county commissioners and that a hearing on the petition will

be held by the board of county commissioners on a date named in such notice not less than three (3) nor more than six (6) weeks from the date of the first publication of such notice.

Whenever a county has conducted a county fair for at least two (2) consecutive years immediately prior to the enactment of this act, it shall not be necessary to file a petition, but in such case the board of county commissioners may cause the clerk to publish a notice in a newspaper of general circulation printed within the county, for at least two (2) weeks, to the effect that it is the intention of the board of county commissioners of such county to create a county fair board for the purpose of conducting a county fair in accordance with the provisions of this act, and that a hearing on the same will be held by the board of county commissioners on a date named in such notice not less than three (3) nor more than six (6) weeks from the date of the first publication of such notice. [1929, ch. 208, § 1, p. 411; I.C.A., § 22-201; am. 1963, ch. 128, § 1, p. 379.]

STATUTORY NOTES

Cross References. — County commissioners to maintain fair grounds, § 31-822.

Exhibits at fairs, power of county commissioners to maintain, § 31-823.

Fair grounds, power of county commissioners to purchase and maintain, § 31-822.

Publication of notice once each calendar week meets requirements, § 60-109.

Compiler's Notes. — The words "this act" refer to S.L. 1929, ch. 208, compiled as §§ 22-201, 22-202 and 22-203 to 22-208.

JUDICIAL DECISIONS

Governmental Capacity.

A county acted in its "governmental capacity" as an arm of the state in conducting a free county fair, organized and held pursuant to statutory provision, and hence, it is not liable for injuries to one knocked down by a horse

while attending the fair because of the county's officers' and agents' negligence, in the absence of showing that the fair had any other revenue than that provided by taxation. *Petersen v. Bannock County*, 61 Idaho 419, 102 P.2d 647 (1940).

RESEARCH REFERENCES

C.J.S. — 3 C.J.S., Agriculture, § 160.

22-202. Hearing of objections — Order creating board — Appointment and selection of members. — The board shall meet on the day fixed, at which time any voter or taxpayer residing within the county may appear and object to the form of the petition, the genuineness of the signatures, or may make any other objection as to the legality of the proceedings of the board; or, any pertinent objection or objections to the creation of the county fair board.

After hearing and considering the objections, if any, made to the proceedings or to the creation of a county fair board, the board shall, if it deems it for the best interests of the county that a county fair be conducted by the county, create a county fair board by an order duly spread upon its minutes.

(A) If the board in a county with a population of two hundred thousand (200,000) persons or less orders the creation of a county fair board, it shall immediately appoint either five (5) or seven (7) persons to membership

thereof, and shall fix the place within the county at which such fair shall be held, and make its action a matter of record. The members shall as nearly as possible be selected from the different industries and localities of the county. If seven (7) persons are appointed on January 18, 1988, appointments shall be made as follows: four (4) members shall be appointed for a term of two (2) years and three (3) members shall be appointed for a term of three (3) years. Thereafter, each appointment shall be made for terms of four (4) years. Appointments shall expire on the third Monday in January.

If five (5) persons are appointed on January 18, 1988, appointments shall be made as follows: three (3) members shall be appointed for a term of two (2) years and two (2) members shall be appointed for a term of three (3) years. Thereafter, each appointment shall be made for terms of three (3) years. Appointments shall expire on the third Monday in January. Any vacancy occurring on such county fair board shall be filled by appointment by the county commissioners at their first regular meeting after the occurrence of such vacancy.

(B) In a county with a population of two hundred thousand one (200,001) or more persons, the board, if it orders the creation of a county fair board, shall immediately appoint either five (5) or seven (7) persons to membership thereon, in the manner provided herein.

If seven (7) persons are appointed on January 17, 1977, appointments shall be made as follows: four (4) members shall be appointed for a term of two (2) years and three (3) members shall be appointed for a term of three (3) years. Thereafter, each appointment shall be made for terms of four (4) years. Appointments shall expire on the third Monday in January.

If five (5) persons are appointed on January 17, 1977, appointments shall be made as follows: three (3) members shall be appointed for a term of two (2) years and two (2) members shall be appointed for a term of three (3) years. Thereafter, each appointment shall be made for terms of three (3) years. Appointments shall expire on the third Monday in January.

County fair boards created after the effective date of this act [January 1, 1977] shall be appointed for staggered terms assuming that the appointments are made on the third Monday in January. [1929, ch. 208, § 2, p. 411; I.C.A., § 22-202; am. 1963, ch. 113, § 1, p. 336; am. 1976, ch. 347, § 1, p. 1155; am. 1987, ch. 184, § 1, p. 363; am. 2000, ch. 347, § 1, p. 1172.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion in the last paragraph was added by the compiler.

Effective Dates. — Section 2 of S.L. 1976, ch. 347 provided the act should be in full force and effect on and after January 1, 1977.

Section 2 of S.L. 1987, ch. 184 provided that the act should take effect on and after January 1, 1988.

Section 2 of S.L. 2000, ch. 347 declared an emergency. Approved April 14, 2000.

22-202A. Designation of county fair board as advisory body. — In counties with a population of two hundred thousand (200,000) persons or more, the board of county commissioners may provide by ordinance that the county fair board shall function as an advisory board to the board of county commissioners. If such an ordinance is adopted, the board of county

commissioners shall retain and may exercise the powers, duties, and responsibilities otherwise charged to the county fair board by the provisions of this chapter. Any such ordinance shall set forth the powers, duties, responsibilities, compensation, and terms of office of the county fair board and may provide for any such other rules and regulations under which the county fair board shall advise the board of county commissioners and conduct its operations. Any such ordinance may be repealed at any time, and if repealed, the provisions of this chapter shall apply as if no such ordinance had been adopted. The provisions of this section shall not be applicable to fair districts in two (2) or more counties organized pursuant to chapter 3, title 22, Idaho Code. [I.C., § 22-202A, as added by 1989, ch. 234, § 1, p. 571; am. 1993, ch. 210, § 1, p. 571.]

22-203. Time for creation. — The county fair board may be created under the provisions of this act at any time before the first Monday in July in any year. [1929, ch. 208, § 3, p. 411; I.C.A., § 22-203.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-201.

22-204. Duties of county fair board — Bonds of members — Meetings — Further duties. — The county fair board shall be charged with the care and custody of all property belonging to the county and used for fair purposes, and shall be responsible for all moneys received by it, raised by tax levy or levies for fair purposes as well as all receipts from the operation of the fair and any other moneys received from other sources for fair purposes. Each member of the county fair board shall file with the board of county commissioners a bond or other form of financial responsibility suitable to the county commissioners in the sum of not less than one thousand dollars (\$1,000) to be approved by the board of county commissioners. The county fair board shall conduct all of its business at the place designated by the board of county commissioners as the place for conducting the county fair, which shall be the place of business of the county fair board. It shall meet at such times and places as the county fair board deems necessary in compliance with the open meeting law.

It shall safely keep or cause to be safely kept all moneys coming into its care, custody or possession in strict compliance with the provisions of the public depository law of this state. It shall formulate in writing and file in its office all plans adopted by it from time to time in connection with the conduct of the business of the county fair, and also file a copy of the same with the board of county commissioners of the county. It shall keep or cause to be kept proper records of its proceedings, business transactions, and true and proper accounts of all moneys received by it and expended or on hand; and it shall require proper vouchers evidencing all disbursements of money. The records of the board shall be open to inspection by any taxpayer or voter within the county during all regular office hours. The board shall publish in at least one (1) issue of the official newspaper of the county a detailed

statement of all moneys received and expended in connection with the operation of any fair or fairs, within ninety (90) days after the holding of any such fair within the county.

It shall take charge of and manage all such property as the county may have acquired or set aside for fair purposes pursuant to the provisions of section 31-822, Idaho Code. It may recommend to the board of county commissioners that such board purchase such real and personal property as may be needed for fair purposes. It shall have power to employ labor, award prizes, make exhibition contracts, fix and charge admission and entrance fees, let contracts for concessions or services to be conducted at the fair or under the direction of the county fair board, but if any concession or service is to extend for a period of less than twelve (12) days in a calendar year, the concession or service may be awarded without bid, and do all other things necessary for holding county fairs. It shall fix the salaries of the secretary and treasurer and prescribe the time and manner of payment. The county fair board shall not have the power to create any indebtedness in excess of the amount to be derived from the special levies for each year and the estimated income from annual fair receipts, nor shall it mortgage or otherwise pledge or encumber any of the real or personal property owned by the county and used for fair purposes. [1929, ch. 208, § 4, p. 411; I.C.A., § 22-204; am. 1973, ch. 179, § 1, p. 412; am. 1981, ch. 47, § 1, p. 70; am. 1988, ch. 228, § 1, p. 440; am. 2000, ch. 17, § 1, p. 33.]

STATUTORY NOTES

Cross References. — Opening meeting law, §§ 67-2340 to 67-2347.

Public depository law, § 57-101.

JUDICIAL DECISIONS

Liability for Torts.

Counties are "public corporations" and political subdivisions of the state and, consequently, are not liable for the torts of their agents and officers committed while acting in

a governmental capacity. *Petersen v. Bannock County*, 61 Idaho 419, 102 P.2d 647 (1940).

Cited in: *Hansen v. Kootenai County Bd. of Comm'rs*, 93 Idaho 655, 471 P.2d 42 (1970).

22-205. Secretary and treasurer of county fair board. — The county fair board shall select and employ a competent secretary whom they shall vest with general managerial powers subject to the provisions of this act. It shall also appoint a treasurer. The office of secretary may be combined with the office of treasurer and held by the same person. The treasurer shall be required to furnish a bond in such sum as may be fixed by the board of county commissioners, and when furnished to be approved by it. [1929, ch. 208, § 5, p. 411; I.C.A., § 22-205.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-201.

22-206. Budget of funds for county fair purposes — Taxing unit under Idaho Budget Law — Maintenance of idle property. — For the purpose of determining what funds must be raised by taxes for county fair purposes, the county fair board shall meet on the first Monday of February of each year, or at such other time as may be provided by law for the preparation of budgets, and shall make a budget of the amounts required for fair purposes, including all salaries to be paid for the current year, and shall deduct therefrom the probable income from such fair or fairs to be conducted by the board during the current year and any balance remaining in its treasury, and shall then certify to the board of county commissioners the amount of said budget; and the amount to be raised by the county for fair purposes shall in no case be in excess of the difference between the total of said budget and the probable income of such fair and the balance on hand in the treasury. The board of county commissioners shall thereafter approve or make such amendments or modifications in the county fair budget as it deems proper, and include the same in its annual county budget. No levy for the purposes of this act shall exceed one hundredth percent (.01%) of the market value for assessment purposes on all taxable property in the county. When such taxes have been collected, the same shall be paid to the treasurer of the county fair board to be used for the purposes authorized by this act. Such special levy, together with any other special levy made pursuant to the provisions of section 31-823, Idaho Code, shall in no case exceed two hundredths percent (.02%) of the market value for assessment purposes on all taxable property in the county. Upon the creation and appointment of the fair board by the county commissioners, it hereby becomes a taxing unit under the provisions of the Idaho Budget Law and as such is empowered to issue tax anticipation notes or warrants as provided by law for maintaining, carrying on, conducting, payment of obligations, premiums, prizes and all other necessary expenses, incurred or to be incurred in conducting a fair. It may be the duty of the county commissioners of any county, where property for county fair purposes is located, to levy an amount sufficient to maintain and protect such fair grounds and property and to pay any deficit or indebtedness then accrued from previous fairs. [1929, ch. 208, § 6, p. 411; am. 1931, ch. 137, § 1, p. 234; I.C.A., § 22-206; am. 1933, ch. 85, § 1, p. 136; am. 1995, ch. 82, § 2, p. 218.]

STATUTORY NOTES

Cross References. — Idaho Budget Law, § 67-3501 et seq.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-201.

JUDICIAL DECISIONS

Liability for Torts.

A county, conducting free county fair, was acting in its governmental capacity and was not liable to a person knocked down by a horse due to the negligence of officers and agents of the county, in absence of showing

that fair had revenue other than that provided by taxation. *Petersen v. Bannock County*, 61 Idaho 419, 102 P.2d 647 (1940).

Cited in: *Hansen v. Kootenai County Bd. of Comm'rs*, 93 Idaho 655, 471 P.2d 42 (1970).

22-207. Disposition of moneys remaining after fair conducted or awards paid. — (1) Any moneys remaining on hand after a county fair has been conducted within the county pursuant to the provisions of this act shall not be paid into the current expense fund of such county, but shall be retained in the custody of the treasurer of the county fair board, and may be used in the conduct of a county fair in the succeeding year or years; provided, however, that such moneys shall be paid into the current expense fund of the county upon order of the board of county commissioners in case the board of county commissioners shall at any time discontinue the holding of annual county fairs.

(2) In any case in which a county fair board, or any person, association or corporation with which the fair board has contracted to conduct activities permitted by law, has paid out moneys by check or warrant in the form of premiums, awards, winnings, prizes, or return of entry fees, and such check or warrant remains uncashed or unclaimed after one (1) year from date of issue, such check or warrant shall be presumed abandoned, and legal title shall revert to the issuer, and such check or warrant may be voided or canceled. The proceeds of such abandoned check or warrant shall not be subject to the provisions of chapter 5, title 14, Idaho Code. [1929, ch. 208, § 7, p. 411; I.C.A., § 22-207; am. 1985, ch. 7, § 1, p. 10.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-201.

Effective Dates. — Section 3 of S.L. 1985, ch. 7 provided "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1978, but only for

those abandoned checks and warrants which have not been delivered into the custody of the state tax commission under the provisions of chapter 5, title 14, Idaho Code, and those abandoned checks and warrants which have not been reported to the state tax commission as abandoned pursuant to chapter 5, title 14, Idaho Code." Approved Feb. 25, 1985.

JUDICIAL DECISIONS

Liability for Torts.

A county, conducting free county fair, was acting in its governmental capacity and was not liable to a person knocked down by a horse due to the negligence of officers and

agents of the county, in absence of showing that fair had revenue other than that provided by taxation. *Petersen v. Bannock County*, 61 Idaho 419, 102 P.2d 647 (1940).

22-208. Expenses of board members. — The members of the county fair board shall be paid their actual and necessary expenses out of the funds provided for fair purposes, upon approval of claims for the same by the board of county commissioners. [1929, ch. 208, § 8, p. 411; I.C.A., § 22-208.]

22-209. Police and fire protection for county fairs. — Notwithstanding any law to the contrary, any municipality in this state, having contiguous to its boundaries an established county fair ground, may by ordinance duly passed, extend to such county fair grounds, the police and fire protection of said municipality and any county, to which such protection is given, shall pay the costs thereof. Said sums to be paid out of the current

expense fund of said county for the protection of county property on said fair grounds. [1941, ch. 83, § 1, p. 157.]

CHAPTER 3

FAIR DISTRICTS IN TWO OR MORE COUNTIES

SECTION.

22-301. Formation of districts.

22-302. Canvass of petitions — Order on petition — Joint meeting of county boards.

22-303. Order creating district — Subdivisions of district — Board of directors.

22-304. Duties of board of directors — Bonds and meetings.

SECTION.

22-305. Further duties of board of directors.

22-306. Compensation and mileage of directors.

22-307. Revenue for fair purposes.

22-308. Addition of counties to district.

22-309. Fiscal year.

22-310. Disposition of moneys remaining after awards paid.

22-301. Formation of districts. — Two (2) or more counties within the state may group themselves together and form a fair district. Petitions fully setting out their purpose, the number of counties to be included within the proposed district, and praying for the formation of such a district, bearing the signatures of not less than fifty-one per cent (51%) of the voters of each county, as based upon the total vote cast for governor at the last state election, shall be presented to the respective boards of county commissioners.

Upon receipt of such petition the clerk of each board shall give notice by publication for not less than two (2) weeks that petition has been filed and will be heard by the board at a day named, not less than three (3) nor more than six (6) weeks thereafter. [1925, ch. 131, § 1, p. 185; am. 1931, ch. 210, § 1, p. 404; I.C.A., § 22-301.]

STATUTORY NOTES

Cross References. — Exhibits at fairs, power of county commissioners to maintain, § 31-823.

Fair grounds, power of county commissioners to purchase and maintain, § 31-822.

Notice by mail, § 60-109A.

Publication of notice, § 60-109.

22-302. Canvass of petitions — Order on petition — Joint meeting of county boards. — The respective boards shall meet in their respective counties on the day fixed and canvass the petitions, and ascertain that they are signed by the requisite number of voters, and that they are in due form. Any voter within the county may appear and object to the form of petition or the genuineness of the signatures, or that the required number of voters have failed to sign. If the board finds that the petition is in due form, signed by the required number of bona fide voters, an order shall be made declaring that it is the wish of the voters of the county to form a fair district, comprising the respective counties named in the petition, and directing the clerk of the board of county commissioners to so inform the clerk of each of the other county boards of commissioners, and to arrange for a time and place for a joint meeting of the respective boards.

The clerk of the board shall thereupon inform, by writing, the clerks of each of the other boards, and suggest a time and place for a joint meeting. By a majority vote the clerks shall fix the time and place, and notify the commissioners. Notice of such joint meeting shall be published for two (2) weeks in a newspaper in each county. The meeting shall be not less than two (2) weeks nor more than four (4) weeks from the date of the clerks' agreement. [1925, ch. 131, § 2, p. 185; I.C.A., § 22-302.]

STATUTORY NOTES

Cross References. — Notice by mail, § 60-109A.

Publication of notice once each calendar week meets requirements, § 60-109.

22-303. Order creating district — Subdivisions of district — Board of directors. — The respective boards shall meet at the time and place fixed, and the petitions of each county shall be duly considered and canvassed, and if all, or at least three (3) [two (2)] of them, are found in due order and signed by the requisite number of voters, the said commissioners shall jointly make an order creating the proposed district out of the counties in which the petitioners are found to be sufficient and shall give it a name, and at the same time subdivide the district into as many subdivisions as the commissioners deem necessary, numbering them. The said boards shall at the same time select a board of directors, one (1) from each subdivision, each of whom must reside within the subdivision he represents. Each director shall hold office for the term of four (4) years. Every four (4) years thereafter the board of county commissioners of the counties comprising the fair district shall select a board of directors. In case of a vacancy caused by death, resignation, or otherwise, said vacancy shall be filled for the unexpired term by the board of county commissioners of the county in which the vacancy occurs. [1925, ch. 131, § 3, p. 185; I.C.A., § 22-303; am. 1996, ch. 48, § 1, p. 141.]

STATUTORY NOTES

Compiler's Notes. — This section provides that the order creating the district may be made if at least three of the petitions are found in due order and signed by the requisite number of voters; but note that, under the

1931 amendment of § 22-301, a district may be formed from two counties; thus, the bracketed insertion in the first sentence was added by the compiler.

22-304. Duties of board of directors — Bonds and meetings. — The board of directors shall be charged with the care and custody of all property of the district fair. They shall file bonds in the sum of one thousand dollars (\$1,000) each. They shall designate a place within the proposed district where the fair grounds shall be located and this place shall thereafter be the place of business of said district. They shall meet at this place of business once each month, or more frequently if the board deems it necessary to accomplish the business of the fair district. They shall see that all moneys are kept in safe depositories by the treasurer, properly safeguarded by bonds. They shall formulate in writing and file in the district office all plans adopted by them from time to time in connection with the conduct of the affairs of said district. They shall see that all records and

accounts are properly kept, supervised and approved; that proper vouchers evidence all disbursements of money; that the records are at all reasonable hours open to the taxpayers of the counties comprising the district. They shall cause to be published in at least one (1) issue of a newspaper in each county comprising said district a detailed statement of the receipts and disbursements of the fair district, within sixty (60) days after the holding of each fair. [1925, ch. 131, § 4, p. 185; am. 1927, ch. 70, § 1, p. 86; I.C.A., § 22-304; am. 1941, ch. 167, § 1, p. 334; am. 1996, ch. 48, § 2, p. 141.]

RESEARCH REFERENCES

C.J.S. — 3 C.J.S., Agriculture, § 153 et seq.

22-305. Further duties of board of directors. — The board of directors shall have power to employ a secretary, whom they may vest with general managerial powers; they shall also appoint a treasurer. The office of secretary may be combined in the same person with that of treasurer; but in no event shall any person serve as both director and manager. They shall have power to acquire for the benefit of the district, such property, real and personal, as may be required in connection with the conduct of district fairs. They shall have power to do everything necessary in connection with the holding of annual fairs, including the employment of labor, awarding of prizes, making of exhibition contracts, letting contracts for concessions or services to be conducted at the fair or under the direction of the district fair board, but if any concession or service is to extend for a period of less than ten (10) days in a calendar year, the concession or service may be awarded without bid, charging admission and entrance fees, and everything that is necessary in conducting the business of the district. They shall fix the salaries of all employees, and prescribe the time and manner of payments. They shall be vested with general powers granted by the laws of the state to directors of corporations, except as otherwise provided in this act.

They shall have power to issue warrants, after the special levies have been agreed upon by the representative boards of county commissioners, in anticipation of the collection of such special tax, but not in excess of eighty percent (80%) of the amount of such special levy, such warrants to be signed by the president [chairman] and secretary of the district. They shall not have power to create any indebtedness in excess of the amount to be derived by special levies each year and the estimated income from annual fair exhibitions or to mortgage or otherwise pledge or encumber any of the real or personal property owned or controlled by the fair district. [1925, ch. 131, § 5, p. 185; am. 1927, ch. 70, § 2, p. 86; I.C.A., § 22-305; am. 1949, ch. 6, § 1, p. 7; am. 1973, ch. 179, § 2, p. 412.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1925, ch. 131, compiled as, §§ 22-301 to 22-308.

The bracketed insertion was added to the

second paragraph by the compiler, as § 22-307 allows for the election of a chairman to head a fair district.

22-306. Compensation and mileage of directors. — Said directors shall receive as compensation thirty-five dollars (\$35.00) per diem while actually engaged in the business of the district and the mileage rate established by the state board of examiners pursuant to the authority in section 67-2008, Idaho Code, for state officers, agents and employees for each mile actually and necessarily traveled while transacting such business. [1925, ch. 131, § 6, p. 185; I.C.A., § 22-306; am. 1970, ch. 23, § 1, p. 50; am. 1975, ch. 7, § 1, p. 11; am. 1978, ch. 371, § 1, p. 976.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1970, ch. 23 declared an emergency and provided the act should be in full force and effect on and after its passage and approval, and retroactive to January 1, 1970.

22-307. Revenue for fair purposes. — Aside from the revenue derived from annual fairs or other exhibitions conducted, the necessary revenue shall be raised as follows: The board of directors shall meet the second week of November of each year, and shall make a budget of the amounts required in the conduct of the affairs of the district, for the current year. Included in the budget shall be an appropriation from the various counties forming the district. Each county's assessment shall be determined by a formula, based upon population and assessed valuation. The board of directors shall certify to each board of county commissioners the amount of said budget, and the amount of revenue to be received from each county and shall file a copy thereof with the clerk of the board of county commissioners of each of the counties in said district, on or before the second week of December of each year. The respective boards of county commissioners of the counties comprising said district, shall meet in joint assembly with the directors of the fair district in January of each year, and shall at said meeting organize by electing a chairman and vice chairman and shall jointly consider the budget proposed by the board of directors of the district, and shall give such approval or make such recommendations as to them may seem proper and desirable; grant to the board of directors of the district such authority in connection with the proposed expenditures, as said commissioners, by a majority vote may decide, pass resolutions or adopt bylaws that may be necessary for the conduct of said fair, such action to be certified back to the respective counties by the board of directors of the fair district.

A majority vote shall be the vote of a majority of the commissioners present at said meeting, and said majority vote shall be binding upon the respective boards of commissioners of all the counties belonging to said district. If the county commissioners shall fail to hold such joint meeting, or shall fail to take any action, then the budget as prepared by the directors of the fair district shall be, without further action, deemed approved, and the sums of money apportioned to the respective counties in the district shall be the sums to be raised by special levy for said purpose. For the purpose of raising the aforesaid revenues, the board of county commissioners of each county in the district shall annually make a levy to raise the required sum apportioned to the respective counties, provided, however, that the said levy

shall not exceed five thousandths percent (.005%) of the market value for assessment purposes on all of the taxable property in the county, the proceeds of which tax shall be paid into the treasury of the fair district and used for any purpose authorized by this act. [1925, ch. 131, § 7, p. 185; am. 1927, ch. 70, § 3, p. 86; I.C.A., § 22-307; am. 1941, ch. 167, § 2, p. 334; am. 1975, ch. 7, § 2, p. 11; am. 1976, ch. 45, § 27, p. 122; am. 1979, ch. 63, § 1, p. 167; am. 1995, ch. 82, § 3, p. 218; am. 1996, ch. 48, § 3, p. 141.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to Acts 1925, ch. 131, compiled as §§ 22-301 to 22-308.

Effective Dates. — Section 32 of S.L. 1976, ch. 45 read: "In order to provide an orderly sequence for implementation of the provisions of this act:

"(a) Sections 1, 2, 3, 4, 7, 8, 9, 10, 11, 15, 27 and 31 shall be in full force and effect on and after January 1, 1977;

"(b) Sections 5, 6, 12, 13, 14, 20, 21, 22, 26 and 30 shall be in full force and effect on and after July 1, 1977; and

"(c) Sections 16, 17, 18, 19, 23, 24, 25, 28 and 29 shall be in full force and effect on and after October 1, 1977."

Section 2 of S. L. 1979, ch. 63 declared an emergency. Approved March 17, 1979.

22-308. Addition of counties to district. — A county or counties may be added to a fair district after its formation upon petition of not less than fifty-one per cent (51%) of the voters of such county or counties provided the boards of commissioners of the counties comprising such fair district determine that it is to the best interest of said district that such other county or counties be added. [1925, ch. 131, § 8, p. 185; I.C.A., § 22-308.]

22-309. Fiscal year. — The fiscal year of each fair district shall commence on the first day of November. [I.C.A., § 22-308A, as added by 1941, ch. 167, § 3, p. 334.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 1941, ch. 167 declared an emergency. Approved March 15, 1941.

22-310. Disposition of moneys remaining after awards paid. — In any case in [which] a fair district, or any person, association or corporation with which the fair district has contracted to conduct activities permitted by law, has paid out moneys by check or warrant in the form of premiums, awards, winnings, prizes, or return of entry fees, and such check or warrant remains uncashed or unclaimed after one (1) year from date of issue, such check or warrant shall be presumed abandoned, and legal title shall revert to the issuer, and such check or warrant may be voided or canceled. The proceeds of such abandoned check or warrant shall not be subject to the provisions of chapter 5, title 14, Idaho Code. [I.C., § 22-310, as added by 1985, ch. 7, § 2, p. 10.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion in the first sentence was added by the compiler.

Effective Dates. — Section 3 of S.L. 1985, ch. 7 declared an emergency and provided "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to

January 1, 1978, but only for those abandoned checks and warrants which have not been delivered into the custody of the state tax commission under the provisions of chapter 5, title 14, Idaho Code, and those abandoned checks and warrants which have not been reported to the state tax commission as abandoned pursuant to chapter 5, title 14, Idaho Code." Approved Feb. 25, 1985.

CHAPTER 4

PURE SEED LAW

SECTION.

22-401 — 22-412. [Repealed.]

22-413. Statewide jurisdiction and preemption.

22-414. Definitions.

22-415. Label requirements — Agricultural, vegetable, flower, tree and shrub seeds.

22-416. Prohibitions.

22-417. Exemptions.

22-418. Duties and authority of director.

SECTION.

22-419. Records.

22-420. Seizure.

22-421. Violations, prosecutions and penalties.

22-421A. Injunction.

22-422 — 22-433. [Repealed.]

22-434. Seed dealer's license.

22-435. State seed [laboratory] advisory board.

22-436. Seed arbitration.

22-401 — 22-412. Definitions — Sale regulations — Labeling requirements — Purity tests — Examination of samples — Enforcement of chapter — Seed commissioner — Exemptions — Penalties — Prosecution. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised S.L. 1913, ch. 189, §§ 1-12, p. 625; reen. C.L. 78:1-78:12; C.S., §§ 2019-2030; am. 1931, ch. 182, §§ 1-4, p. 299; I.C.A.,

§§ 22-501 — 22-512; am. 1939, ch. 219, §§ 1-3, p. 462; am. 1943, ch. 110, § 1, p. 214, were repealed by S.L. 1951, ch. 243, § 9, p. 508.

22-413. Statewide jurisdiction and preemption. — (1) This chapter and its provisions are of statewide concern and occupy the whole field of regulation regarding the registration, labeling, sale, storage, transportation, distribution, notification of use, use of seeds, and planting of seeds to the exclusion of all local ordinances or regulations. Except as otherwise specifically provided in this chapter, no ordinance or regulation of any political subdivision may prohibit or in any way attempt to regulate any matter relating to the registration, labeling, sale, storage, transportation, distribution, notification of use, use of seeds, or planting of seeds.

(2) The provisions of subsection (1) of this section shall not preempt county or city local zoning ordinances governing the physical location or siting of seed facilities. [I.C., § 22-413, as added by 2005, ch. 401, § 1, p. 1366.]

STATUTORY NOTES

Prior Laws. — Former § 22-413, which ch. 219, § 4, p. 462, was repealed by S.L. comprised I.C.A., § 22-513 as added by 1939, 1951, ch. 243, § 9, p. 508.

22-414. Definitions. — When used in this act:

(1) "Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of the chapter.

(2) "Agricultural seeds" includes the seeds of grass, forage, cereal and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural, turf, or field seeds, and mixtures of such seeds, but specifically does not include seed potatoes as defined in section 22-501, Idaho Code.

(3) "Blend" means seed consisting of more than one (1) variety of a kind, each in excess of five percent (5%) by weight of the whole.

(4) "Certifying agency" means:

(a) An agency authorized under laws of a state, territory, or possession to officially certify seed and which has standards and procedures approved by the U.S. secretary of agriculture to assure the genetic purity and identity of the seed certified; or

(b) An agency of a foreign country determined by the U.S. secretary of agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under paragraph (a) of this subsection.

(5) "Crop seed" means any agricultural, vegetable or flower seed, other than the pure seed, present in a lot of seed and which weighs less than five percent (5%) of the total weight of the lot.

(6) "Director" means the director of the department of agriculture of the state of Idaho.

(7) "Flower seeds" includes seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold under the name of flower seeds in this state.

(8) "Grower's or collector's declaration" means a statement signed by the grower or collector giving for any lot of seed the lot number, the kind, the variety, origin, and weight.

(9) "Hard seed" means any viable agricultural, vegetable or flower seed that fails to germinate within the prescribed germination period due to an impermeable seed coat.

(10) "Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining one (1) of three (3) combinations:

(a) Two (2) or more inbred lines;

(b) One (1) inbred or a single cross with an open pollinated variety; or

(c) Two (2) varieties or species, except open pollinated varieties of corn (*Zea mays*).

The second generation or subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names.

(11) "Inert matter" means the collective parts of incomplete plants, seeds, seedlike structures and other nonseed particles present in a lot of seed.

(12) "In-state seed dealer" means any seed dealer with an established plant, warehouse or place of business in the state of Idaho.

(13) "Kind" means one (1) or more related species or subspecies which singly or collectively is known by one (1) common name, for example, as wheat, oat, vetch, sweet clover, cabbage, or cauliflower.

(14) "Labeling" includes all labels, and other written, printed, or graphic representations in any form whatsoever, accompanying and pertaining to any seed whether in bulk or in containers, and includes invoices.

(15) "Lot of seed" means a definite quantity of seed identified by a lot number or other lot identification every portion or bag of which is uniform, within permitted tolerances, for the factors which appear in the labeling.

(16) "Mixture," "mix," or "mixed" means seed consisting of more than one (1) kind, each in excess of five percent (5%) by weight of the whole.

(17) "Noxious weed seeds" means the seeds of any plant which is determined by the director to be injurious to public health, crops, livestock, land or other property. They are divided into two (2) classes:

(a) "Prohibited noxious weed seeds" are the seeds which when established are highly destructive and difficult to control in this state by ordinary good cultural practices.

(b) "Restricted noxious weed seeds" are the seeds of such weeds as are very objectionable in fields, lawns, or gardens but can be controlled by good cultural practices.

The director shall publish and maintain a list of all noxious weeds, which shall also be included in the rules of the department of agriculture. Pursuant to administrative rules, the director may add to or subtract from the list of seeds included under either definition. Any addition or subtraction is effective thirty (30) days after publication.

(18) "Origin" for an indigenous stand of trees is the area on which the trees are growing; for a nonindigenous stand, it is the place from which the seeds or plants were originally introduced.

(19) "Out-of-state seed dealer" means any seed dealer selling or shipping seed into the state of Idaho without owning an established plant, warehouse or place of business in Idaho.

(20) "Person" shall include any individual, partnership, corporation, company, society or association.

(21) "Private hearing" may consist of a discussion of facts between the person charged with a violation of the provisions of this chapter and the enforcement officer.

(22) "Producer" means any person who is the owner, tenant or operator of land who has an interest in and receives all or part of the proceeds from the sale of seeds produced on that land.

(23) "Record" is all information relating to a shipment of seed and must include a file sample of each lot of seed, purity, and current germination test documentation. For tree and shrub seed, the record must also include all documents supporting the statement of origin and elevation of the seed.

(24) "Seed dealer" means any person that lets it be known by any means or manner that he has seed offered for sale.

(25) "Stop sale" means an administrative order restraining the sale, use, disposition, and movement of a designated seed lot.

(26) "Tree seed and shrub seed" includes seeds of woody plants commonly known and sold as tree seed and shrub seeds.

(27) "Variety" means a subdivision of a kind which is characterized by growth, plant, fruit, seed or other characteristics by which it can be differentiated from other sorts of the same kind.

(28) "Vegetable seeds" means the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable seeds.

(29) "Weed seeds" means the seeds of all plants recognized as weeds by the director. [1951, ch. 243, § 1, p. 508; am. 1974, ch. 18, § 3, p. 364; am. 1985, ch. 22, § 1, p. 35; am. 1985, ch. 247, § 1, p. 578; am. 1987, ch. 188, § 1, p. 369; am. 1996, ch. 214, § 1, p. 693; am. 1997, ch. 17, § 1, p. 24.]

STATUTORY NOTES

Cross References. — Seed liens, §§ 45-304 to 45-314.

Compiler's Notes. — A provision appeared preceding section 1 of S.L. 1951, ch. 243 which read: "This act shall be cited as The Idaho Seed Law."

The words "this act" refer to S.L. 1951, ch. 243, which is compiled as §§ 22-414 to 22-418, 22-420, and 22-421.

22-415. Label requirements — Agricultural, vegetable, flower, tree and shrub seeds. — Before each container of seed is sold, offered for sale, exposed for sale, or delivered under a contract within this state for sowing purposes, it shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information:

(1) For agricultural seeds and mixtures:

(a) The name of the kind or the kind and variety of each agricultural seed component in excess of five percent (5%) of the whole, and the percentage by weight of each pure seed. The name of the kind and variety shall be on the label of seeds of wheat, barley and dry-edible beans, or if any mixture containing any kinds herein listed, the names of the varieties shall be listed. When more than one (1) pure seed is present, the word "mixture" or the word "mixed" and the name of the mixture shall be shown conspicuously on the label. Hybrids shall be labeled as hybrids.

(b) Lot number or other lot identification.

(c) Origin by state or foreign country, if known. If the origin is unknown, that fact shall be stated.

(d) Percentage by weight of all other crop seeds combined, none of which individually exceeds five percent (5%) of the total weight. If a mixture contains no crop seed, that shall be stated or shown.

(e) Percentage by weight of inert matter.

(f) Percentage by weight of all weed seeds.

(g) The name and rate of occurrence per pound of each kind of restricted noxious weed seed present. All determinations of noxious weed seeds shall

be subject to tolerances and methods of determination prescribed in the rules and regulations under this chapter.

(h) Germination for each named agricultural seed:

- (i) Percentage of germination, exclusive of hard seed;
- (ii) Percentage of hard seed, if present;
- (iii) The calendar month and year the test was completed to determine the percentages;
- (iv) A tetrazolium test is deemed sufficient to meet germination labeling requirements if the species is included in the director's published list.

(i) Name and address of the person who labeled the seed, or who sells or delivers seed under a contract, or his federal consumer marketing service number or agricultural marketing service number.

(2) For vegetable seeds in packets or preplanted containers, mats, tapes or other planting devices:

- (a) Name of kind of seed;
- (b) Lot identification;
- (c) The year for which the seed was packed for sale, or the percentage of germination and the calendar month and year the germination test was completed.

(d) For seeds which germinate less than the standard last established by the director in the rules and regulations promulgated under this chapter:

- (i) Percentage of germination, exclusive of hard seed;
- (ii) Percentage of hard seed, if present;
- (iii) The calendar month and year the test was completed to determine such percentages;
- (iv) The words "Below Standard" in not less than 8-point type;
- (v) A tetrazolium test is deemed sufficient to meet germination labeling requirements if the species is included in the director's published list.

(e) For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds, a statement to indicate the number of seeds in each container or net weight.

(f) Name and address of the person who labeled the seed, or who sells or delivers seed under a contract, or his federal consumer marketing service number or agricultural marketing service number.

(3) For vegetable seeds, in mixtures, in bulk, or in containers other than packets and preplanted containers, mats, tape, or other devices:

(a) The name of each kind and variety present in excess of five percent (5%) of the whole, and the percentage by weight of each in order of predominance;

(b) Lot identification;

(c) Germination for each named vegetable seed:

- (i) Percentage of germination, exclusive of hard seed;
- (ii) Percentage of hard seed, if present;
- (iii) The calendar month and year the germination test was completed;
- (iv) A tetrazolium test is deemed sufficient to meet germination labeling requirements if the species is included in the director's published list.

(d) The labeling requirements for vegetable seeds in containers of more than eight (8) ounces shall be satisfied if the seed is weighed from an accurately labeled container in the presence of the purchaser.

(e) Name and address of the person who labeled the seed, or his federal consumer marketing service number or agricultural marketing service number.

(4) For flower seeds:

(a) The name of the kind and variety or a statement of type and performance;

(b) The calendar month and year the seed was tested or the year the seed was packaged;

(c) The name and address of the person who labeled or who sells the seed or his federal consumer marketing service number or agricultural marketing service number;

(d) In packets or preplanted containers, mats, tapes or other planting devices, and in addition to the requirements of paragraphs (a) through (c) of subsection (4) of this section:

(i) The number of seeds or net weight in the container;

(ii) The percentage of germination exclusive of hard seed for those seeds which germinate less than the germination standards established in the rules and regulations promulgated under this chapter; and

(iii) The words "Below Standard" in not less than 8-point type.

(e) In containers other than packets or preplanted containers, mats, tapes or other planting devices, and in addition to requirements of paragraphs (a) through (c) of subsection (4) of this section:

(i) Lot number or other lot identification;

(ii) Percentage of germination, exclusive of hard seed, and the percentage of hard seed, if present.

(5) For tree and shrub seed:

(a) Common name of the species;

(b) The scientific name of the genus and species;

(c) Lot number or other lot identification;

(d) Origin, if known. If the origin is unknown that fact shall be stated:

(i) For seed collected from a predominantly indigenous stand, the area of collection given by latitude and longitude, geographic description, or political subdivision;

(ii) For seed collected from other than a predominantly indigenous stand, identify the area of collection and the origin of the stand, or state "origin not indigenous."

(e) The elevation, or the upper and lower limits of elevations, within which the seed was collected.

(f) Purity as a percentage of pure seed by weight.

(g) For those species for which standard germination testing procedures are prescribed by the director:

(i) Percentage of germination, exclusive of hard seed;

(ii) Percentage of hard seed, if present;

(iii) The calendar year and month the germination test was completed.

(h) Transported in bulk, an invoice is sufficient to meet labeling requirements when the container is identified with a lot number.

- (i) The name and address of the person who sells the seed or his federal consumer marketing service number or agricultural marketing service number.
- (6) For all agricultural, vegetable, flower, tree and shrub seeds treated to prevent contamination, infection or disease:
 - (a) A word or statement indicating the seed has been treated;
 - (b) The common or generic name of the applied substance, or description of the process used;
 - (c) The appropriate toxicity category signal word and precautionary statements which correspond to the toxicity categories set forth in title 40, code of federal regulations, effective July 1, 1989;

Signal Words for Toxicity Categories

Toxicity Category	Signal Word
I	DANGER If assigned to toxicity category I on the basis of oral, inhalation or dermal toxicity, the word "Poison" shall appear in red on a background of distinctly contrasting color and the skull and crossbones shall appear in immediate proximity to the word "Poison".
II	WARNING
III	CAUTION
IV	CAUTION

- (d) When more than one (1) substance is applied, each substance shall be noted on the label, and the seed shall be labeled for the substance with the higher level of toxicity category; and
- (e) An expiration date of any inoculant applied to the seed.
- (7) For agricultural seeds coated with any substance which changes the size, shape or weight of the original seed:
 - (a) Percentage of pure seeds with coating material removed;
 - (b) Percentage of coating material; and
 - (c) Percentage of germination.
- (8) The arbitration requirement provided in section 22-436, Idaho Code. [1951, ch. 243, § 2, p. 508; am. 1974, ch. 18, § 4, p. 364; am. 1985, ch. 22, § 2, p. 35; am. 1987, ch. 188, § 2, p. 369; am. 1989, ch. 370, § 1, p. 927; am. 1990, ch. 89, § 1, p. 184; am. 1991, ch. 171, § 1, p. 413; am. 1993, ch. 70, § 1, p. 184.]

RESEARCH REFERENCES

- C.J.S. — 3 C.J.S., Agriculture, § 2.
- 22-416. Prohibitions.** — (1) It shall be unlawful for any person to sell, offer for sale, expose for sale, or deliver under a contract any seed within the state:
- (a) Unless the test to determine the percentage of germination required by section 22-415, Idaho Code, shall have been completed within a fifteen

(15) month period, exclusive of the calendar month in which the test was completed immediately prior to sale, exposure for sale, or offered for sale or transportation. This prohibition does not apply to tree and shrub seeds or agricultural or vegetable seed in hermetically-sealed containers. The director may by regulation prescribe a longer period than otherwise stated herein, and the conditions and methods of treatment or packaging and labeling which he deems to be necessary to maintain the identification and viability of such seed.

(b) Not labeled in accordance with the provisions of this chapter, or having false or misleading labeling.

(c) Pertaining to which there has been a false or misleading advertisement.

(d) Containing prohibited noxious weed seeds.

(e) Containing restricted noxious weed seeds singly or collectively in excess of tolerances as provided by the rules and regulations of the department.

(f) Labeled a variety name for which a United States certificate of plant variety protection has been issued or is pending, specifying seed sale only as a class of certified seed, when the seed is in fact not certified by an official seed certifying agency.

(g) If the crop seed rye (*Secale cereal*) is present in wheat, oats or barley.

(2) It shall be unlawful for any person within this state:

(a) To detach, alter, deface, or destroy any label provided for in this chapter or the rules and regulations made and promulgated thereunder, or to alter or substitute seed, in a manner that may defeat the purposes of this chapter.

(b) To disseminate any false or misleading advertisement concerning seeds in any manner or by any means.

(c) To hinder or obstruct in any way any authorized person in the performance of his duties under this chapter.

(d) To fail to comply with a "stop-sale" order.

(e) To ship, deliver, transport, or sell seeds treated with any substance likely to be poisonous to human beings or animals unless there is conspicuously shown on the analysis tag or label, or on a separate tag or container, the word "treated", signal word and precautionary statements for appropriate warning adequate to protect the public based on the toxicity categories set forth in title 40, code of federal regulations, effective July 1, 1989. It is unlawful to sell or divert seed so treated for use or for processing either for human or animal consumption.

(f) To transport screenings containing noxious weed seeds without proper covering or tarping, or containerizing or boxing, to prevent noxious weed seed dissemination. All screenings containing noxious weed seeds must be processed to eliminate germination.

(g) To return to a seed dealer treated seed in open bags except for storage purposes.

(3) It shall be unlawful for any person to make any representation as to any particular lot of seeds, tubers, plants or plant parts intended to be offered for sale as "Idaho State Certified," "State Certified," "Idaho Certi-

fied," or "Certified," or similar words or phrases, without first having the written certificate of the Idaho agricultural experiment station in the college of agriculture of the university of Idaho or its agent as to the genetic purity and/or other characteristics of the particular seeds, tubers, plants or plant parts as represented. [1951, ch. 243, § 3, p. 508; am. 1970, ch. 8, § 1, p. 12; am. 1974, ch. 18, § 5, p. 364; am. 1979, ch. 180, § 1, p. 533; am. 1985, ch. 22, § 3, p. 35; am. 1987, ch. 188, § 3, p. 369; am. 1990, ch. 89, § 2, p. 184; am. 1990, ch. 413, § 3, p. 1144; am. 1991, ch. 171, § 2, p. 413.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

22-417. Exemptions. — (1) The provisions of sections 22-415 and 22-416, Idaho Code, shall not apply:

(a) To seed or grain not intended for sowing purposes.

(b) To seed in storage in, or consigned to, a seed cleaning or processing establishment for cleaning or processing; provided, that any labeling or other representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to this chapter.

(2) No person shall be subject to the penalties of this chapter for having sold or offered for sale any seeds which were incorrectly labeled or misrepresented as to kind, variety, type, or origin and elevation, when the seeds cannot be differentiated by examination, unless he has failed to obtain reasonable documentation as an invoice, grower's declaration or other labeling to verify the contents. [1951, ch. 243, § 4, p. 508; am. 1987, ch. 188, § 4, p. 369.]

JUDICIAL DECISIONS

Persons Protected.

This section is designed to protect those customers who purchased mislabeled seed and is not designed to provide protection to the suppliers of mislabeled seed. *Nezperce Storage Co. v. Zenner*, 105 Idaho 464, 670 P.2d 871 (1983).

Finding of jury that buyer of wheat to be used as seed was entitled to recover consequential damages from seller when seed proved not to be of the proper variety would

not be set aside on ground that jury was not properly instructed on negligence per se; although such doctrine is ordinarily applied where plaintiff has suffered injury by defendant who is in violation of a statute, this section does not protect supplier of mislabeled seed and, hence, the statute and the doctrine of negligence per se were irrelevant. *Nezperce Storage Co. v. Zenner*, 105 Idaho 464, 670 P.2d 871 (1983).

22-418. Duties and authority of director. — The duty of enforcing the provisions of this chapter and carrying out its provisions and requirements shall be vested in the director pursuant to section 22-103, Idaho Code. Additional duties of the director or his authorized agents shall include, but are not limited to, the following:

(1) To establish and maintain or make provision for seed testing facilities.

(2) To have analyses and tests of samples of seed made as necessary.

(3) To make or provide for making purity and germination tests of seeds for farmers and dealers on request.

(4) The director of the department of agriculture may by rule set the service and license fees to be collected. Fees so collected shall be paid into the state treasury and credited to the agriculture department inspection account, created in section 22-104, Idaho Code, and such fees shall be used only to pay the costs of operating the state seed laboratory.

(5) To enter upon any public or private premises during regular business hours in order to have access to seeds subject to this chapter.

(6) To sample and inspect agricultural, vegetable, flower, tree and shrub seeds transported, sold, offered or exposed for sale, or delivered under a contract within this state for sowing purposes, at such time and place and to such extent as he may deem necessary to determine whether the seeds are in compliance with the provisions of this chapter, and to notify promptly the person who transported, sold, offered or exposed the seed for sale of any violation.

(7) To issue and enforce a "stop-sale" order to the owner or custodian of any lot of seed which is in violation of any of the provisions of this chapter, which order shall prohibit further sale or delivery under a contract of the seed until such officer has evidence that the law has been complied with; provided, that in respect to seeds which have been denied sale as provided in this paragraph, the owner or custodian of such seeds shall have the right to appeal from such order to the district court of the county in which the seeds are found, praying for a judgment as to the justification of the order and for the discharge of such seed from the order prohibiting the sale in accordance with the findings of this court; and provided further, that the provisions of this paragraph shall not be construed as limiting the right of the enforcement officer to proceed as authorized under other sections of this chapter.

(8) To cooperate with the United States department of agriculture and other agencies in seed law enforcement.

(9) To notify in writing, the proprietor of any plant variety protected under the United States plant variety protection act when any sample of a proprietor's variety is received for testing at the Idaho state seed laboratory.

(10) To cooperate fully with the proprietor of any plant variety which is protected under the United States plant variety protection act to secure for the proprietor the full protection afforded under the United States plant variety protection act or the federal seed act, or both, by releasing to the proprietor any and all knowledge as may come to the attention of the director or his authorized agents in regard to the illegal use of any United States protected variety.

(11) To prescribe and adopt rules governing:

(a) The methods of sampling, inspecting, analysis tests and examination of seed, and the tolerances to be followed in the administration of this chapter, which shall be in general accord with officially prescribed practice in interstate commerce;

(b) Reasonable standards of germination for vegetable seeds and flower seeds;

(c) Labeling of flower seeds;

(d) A list of the kinds of flower seeds subject to the flower seed germinations labeling requirements;

(e) A list of the tree and shrub species subject to germination labeling requirements;

(f) A list of species that may be tetrazolium tested in lieu of germination testing. [1951, ch. 243, § 5, p. 508; am. 1971, ch. 216, § 1, p. 969; am. 1974, ch. 18, § 6, p. 364; am. 1987, ch. 188, § 5, p. 369; am. 1991, ch. 171, § 3, p. 413; am. 1992, ch. 70, § 1, p. 204; am. 1998, ch. 203, § 1, p. 721.]

STATUTORY NOTES

Federal References. — The plant variety protection act, referred to in subsections (9) and (10) of this section, is generally compiled as 7 USCS § 2321 et seq.

The federal seed act, referred to in subsection (10) of this section, is compiled as 7 USCS § 1551 et seq.

22-419. Records. — Each person whose name appears on the label as handling agricultural, vegetable, flower or tree and shrub seeds subject to the provisions of this chapter shall keep for a period of two (2) years complete records of each lot of agricultural, vegetable, flower or tree and shrub seed handled and keep for one (1) year a file sample of each lot of seed after final disposition of the lot. All such records and samples pertaining to every shipment shall be accessible for inspection by the director or his agent during customary business hours. [I.C., § 22-419, as added by 1987, ch. 188, § 7, p. 369.]

STATUTORY NOTES

Prior Laws. — Former § 22-419, which comprised 1951, ch. 243, § 6, p. 508; am. 1971, ch. 216, § 2, p. 969; am. 1974, ch. 18,

§ 7, p. 364; am. 1981, ch. 301, § 1, p. 623, was repealed by S.L. 1987, ch. 188, § 6.

22-420. Seizure. — Any lot of seed not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the director to a court of competent jurisdiction in the locality in which the seed is located. In the event that the court finds the seed does not meet the requirements set out in this chapter and orders the condemnation of the seed, it shall be denatured, processed, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this state; provided, that in no instance shall the court order such disposition of said seed without first having given the defendant an opportunity to apply to the court for release of the seed or permission to process or relabel it for compliance with the provisions of this chapter. Release of said seed shall be made only upon proof of compliance. [1951, ch. 243, § 7, p. 508; am. 1974, ch. 18, § 8, p. 364; am. 1987, ch. 188, § 8, p. 369.]

22-421. Violations, prosecutions and penalties. — (1) Any person who violates or fails to comply with any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than three thousand dollars (\$3,000) or be imprisoned in the county jail for not more than twelve (12) months or be subject to both such fine and imprisonment.

Violations shall include, but are not limited to, mislabeling of variety, mislabeling prohibited noxious weed seeds, exceeding restricted noxious weed tolerances, failure to keep records as specified in section 22-419, Idaho Code, mislabeling purity or germination percentages, and any other intentional mislabeling.

When the director or his authorized agents shall find that any person has violated any of the provisions of this chapter, he or his duly authorized agents may institute proceedings in a court of competent jurisdiction in the county in which the violation occurred, or the director may file with the attorney general such evidence as may be deemed necessary; provided, however, that the director may permit the defendant to appear before the director to introduce evidence either in person or by agent or attorney at a private hearing. If, after such hearing, or without such hearing in case the defendant or his agent or attorney fails or refuses to appear, the director is of the opinion that the evidence warrants prosecution, he shall proceed as herein provided.

It shall be the duty of the prosecuting attorney of the county in which the violation occurred to institute proceedings at once against any person charged with a violation of this chapter, if, in the judgment of the officer the information submitted warrants action.

After judgment by the court in any case arising under this chapter, the director shall publish any information pertinent to the issuance of the judgment by the court in such media as he may designate from time to time.

(2) Any person who violates or fails to comply with any of the provisions of this chapter or any regulations promulgated under this chapter may be assessed a civil penalty by the department or its duly authorized agent of not more than two thousand dollars (\$2,000) for each offense and shall be liable for reasonable attorney fees. Assessment of a civil penalty may be made in conjunction with any other department administrative action. No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act. If the department is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court. Any person against whom the department has assessed a civil penalty under the provisions of this section may, within thirty (30) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred. Moneys collected for violation of a rule or regulation shall be remitted to the agricultural inspection seed testing account.

(3) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when the director believes that the public interest will be best served by suitable warnings or other administrative action. [1951, ch. 243, § 8, p. 508; am. 1974, ch. 18, § 9, p. 364; am. 1987, ch. 188, § 9, p. 369; am. 1993, ch. 207, § 1, p. 568.]

STATUTORY NOTES

Cross References. — Administrative procedure act, § 67-5201.

Effective Dates. — Section 10 of S.L. 1951, ch. 243 provided this act should be effective on and after July 1, 1951.

Section 263 of S.L. 1974, ch. 18 provided that the act should take effect on and after July 1, 1974.

22-421A. Injunction. — When in the performance of his duties the director applies to any court for a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rules and regulations promulgated under this chapter, the injunction is to be issued without bond. [I.C., § 22-421A, as added by 1987, ch. 188, § 10, p. 369.]

STATUTORY NOTES

Compiler's Notes. — Section 11 of S.L. 1987, ch. 188 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such

provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

22-422 — 22-433. Seed and plant certification act of 1959. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised 1959, ch. 71, §§ 1-14, p. 153, were repealed by S.L. 1990, ch. 413, § 1.

For present law, see § 22-1501 et seq.

22-434. Seed dealer's license. — An in-state seed dealer or an out-of-state seed dealer who conditions or labels or sells, for the use of others any seed, shall obtain a license from the department authorizing him to condition or label or sell such seed. A dealer shall not be entitled to a license unless he has an established plant, warehouse or place of business.

(1) A separate license shall be required for each place of business from which seed regulated under this chapter is sold. Application for licenses shall be on a form provided by the director.

(2) Applications shall be renewed no later than July 1 of each year.

(3) Fees so collected shall be paid into the state treasury and credited to the state agricultural [agriculture department] inspection account.

(4) In-state producers selling their own crop shall be exempt from this section.

(5) Any person selling seed who has total annual gross seed sales not exceeding five hundred dollars (\$500) is exempt from this section.

(6) An in-state seed dealer or an out-of-state seed dealer, who sells, offers for sale, exposes for sale or delivers seed only in packages of less than eight (8) ounces shall be exempt from this section.

(7) The department may suspend, revoke, or refuse to issue or renew the license of any person when it is satisfied that:

(a) The applicant or licensee has been guilty of fraud, deception, or misrepresentation in the procurement of a license; and/or

(b) The licensee was guilty of violating any of the provisions of this chapter. [I.C., § 22-434, as added by 1985, ch. 247, § 2, p. 578; am. 1986, ch. 110, § 1, p. 303; am. 1989, ch. 41, § 1, p. 54; am. 1994, ch. 50, § 1, p. 88; am. 1997, ch. 17, § 2, p. 24; am. 1998, ch. 203, § 2, p. 721; am. 2000, ch. 140, § 1, p. 368; am. 2004, ch. 162, § 1, p. 528.]

STATUTORY NOTES

Cross References. — Agriculture department inspection account, § 22-104.

Compiler's Notes. — The bracketed inser-

tion in subsection (3) was added by the compiler.

22-435. State seed [laboratory] advisory board. — (1) In order to maintain close contact between the department and the seed industry, there is hereby created a state seed laboratory advisory board which shall consist of nine (9) official members and nine (9) ex officio alternates appointed by the director of the department of agriculture from a list provided by the Idaho seed council. The Idaho seed council will nominate a member and an alternate for each vacancy on the advisory board to represent the following seed commodities:

- (a) Cereal grains
- (b) Grasses — turf
- (c) Grasses — forage
- (d) Small seeded legumes
- (e) Corn and small seeded vegetables
- (f) Garden beans
- (g) Field beans
- (h) Oil crops
- (i) Natives.

The executive vice-president of the Idaho crop improvement association shall serve as a permanent tenth official member of the board. The president of the Idaho seed analysts association, or his representative, shall serve as a permanent eleventh official member of the board. Additionally, without the need for any nominations, the director shall appoint one (1) grower member who shall serve as the twelfth official member of the board and serve a three (3) year term.

(2) Existing member terms will end on the last May 31 of an existing term with the successor term to begin June 1 of the same year. All terms shall be for a period of three (3) years. A member and his alternate shall serve the same length of term. Vacancies in office shall be filled by an alternate for the unexpired term.

(3) Official members or an alternate present in the absence of his respective representative will have the right to vote. A member and his respective alternate are not to work for the same employer.

(4) Members or alternates of the board shall be compensated as provided in section 59-509(a), Idaho Code.

(5) The functions of the board shall be to advise and counsel with the department in the administration of the provisions of sections 22-414 through 22-436, Idaho Code.

(6) The board shall meet at the call of the chairman or the director of the Idaho department of agriculture or his designee. A majority of the members present at any meeting shall constitute a quorum, and a majority vote of the quorum at any meeting shall constitute an official act of the board.

(7) At the first meeting after June 1, in each year, the board shall select a chairman. The director of the Idaho department of agriculture and the manager of the Idaho state seed laboratory in the department of agriculture or their representatives, shall be ex officio members without the right to vote. [I.C., § 22-435, as added by 1989, ch. 209, § 1, p. 513; am. 1995, ch. 32, § 1, p. 50; am. 2003, ch. 121, § 1, p. 369; am. 2009, ch. 38, § 1, p. 109.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 38, in the first sentence in subsection (1), increased the number of official members and ex officio alternates from eight to nine; added subsection (1)(i); in the last paragraph in subsection (1), substituted “vice-president” for “secretary,” “tenth” for “ninth,” “eleventh” for “tenth,” and “twelfth” for “eleventh”; in subsection (2), rewrote the first sentence, which read: “The members first appointed shall determine by lot the length of their terms: Four (4) to serve for three (3) years, and four (4) to serve for (2) years, each term beginning July 1, 1989” and added the second

sentence; and, in subsection (7), substituted “June 1” for “July 1” and “manager” for “bureau chief.”

Compiler’s Notes. — The bracketed insertion in the section heading was added by the compiler.

The Idaho seed council, referred to in the introductory paragraph of subsection (1), was merged into the Idaho eastern Oregon seed association in 1998. See <http://www.ieosa.org>.

For more on the Idaho crop improvement association, inc., referred to in the last paragraph of subsection (1), see <http://www.idahocrop.com>

22-436. Seed arbitration. — (1) Requirement of arbitration. When any buyer claims to have been damaged by the failure of any seed for planting to produce or perform as represented by the required label to be attached to such seed under section 22-415, Idaho Code, or by warranty, or as a result of negligence, as a prerequisite to the buyer’s right to maintain a legal action against the dealer or any other seller of such seed, the buyer shall first submit the claim to arbitration as provided in this section. The monetary value of the claim must exceed three thousand dollars (\$3,000). Any applicable period of limitations with respect to such claim shall be tolled until ten (10) days after the filing of the report of arbitration with the director of the department of agriculture as provided in subsection (5)(i) of this section.

(2) Notice of arbitration requirement. Conspicuous language calling attention to the requirement for arbitration under this section shall be referenced or included on the analysis label required under section 22-415, Idaho Code, or otherwise attached to the seed bag or package. Arbitration shall not be required unless this notice is included. A notice in the following form, or equivalent language, shall be sufficient:

NOTICE OF REQUIRED ARBITRATION

Under the seed laws of some states, arbitration is required as a precondition of maintaining certain legal actions, counterclaims or defenses against a seller of seed. The buyer must file a complaint along with the filing fee with the Idaho Department of Agriculture within such time as to permit inspection of the crops, plants or trees. The buyer shall notify and serve a copy of the complaint upon the seller by certified mail.

(3) Effect of arbitration.

(a) Agreement to arbitrate. The report of arbitration shall be binding upon all parties to the extent, if any, that they have so agreed in any contract governing the sale of the seed.

(b) Commencement of legal action. In the absence of an agreement to be bound by arbitration, a buyer may commence legal proceedings against a seller or assert such claim as a counterclaim or defense in any action brought by the seller, at any time after the receipt of the report of arbitration.

(c) Use as evidence. In any litigation involving a complaint which has been the subject of arbitration under this section, any party may introduce the report of arbitration as evidence of the findings of the report, and the court may give such weight to the arbitration council's findings and recommendations as to damages and costs, as the court may see fit based upon all the evidence before the court. The court may also take into account any finding of the arbitration council with respect to the failure of any party to cooperate in the arbitration proceedings including, any finding as to the effect of delay in filing the arbitration claim upon the arbitration council's ability to determine the facts of the case.

(4) Establishment of seed arbitration council. Each of the following individuals or organizations may provide a nomination list of five (5) names to the director. From the nomination lists, the director shall comprise a list consisting of fifteen (15) names from which three (3) members of the arbitration council shall be selected pursuant to the provisions of subsection (5)(c) of this section:

(a) The associate dean of the college of agriculture; director of the Idaho agricultural experiment stations, college of agriculture, university of Idaho.

(b) The department head of plant, soil and entomological sciences, college of agriculture, university of Idaho.

(c) The president of Idaho-eastern Oregon seed association.

(d) The president of the Idaho crop improvement association.

(e) The president of the Idaho farm bureau.

(5) Procedures.

(a) Commencement. A buyer may invoke arbitration by filing a sworn complaint with the director together with a filing fee of one hundred dollars (\$100) which is nonrefundable. The buyer shall serve a copy of the complaint upon the seller by certified mail within such time as to permit inspection of the crops, plants or trees by the seed arbitration council or

its representatives and by the dealer or seller from whom the seed was purchased. If the seeds are not planted, the buyer shall serve a copy of the complaint upon the seller by certified mail not later than two (2) years after the purchase of the seed lot.

(b) Seller's answer. Within twenty (20) days after receipt of a copy of the complaint, the seller shall file with the director an answer to the complaint and serve a copy of the answer upon the buyer by certified mail.

(c) Referral to arbitration council. The complaint and answer shall be referred to a five (5) person arbitration council. Each party shall select one (1) arbitrator from the director's list of nominees established under the provisions of subsection (4) of this section. Those arbitrators shall select a third arbitrator from the director's list of nominees. A representative of the Idaho department of agriculture shall be the fourth arbitrator and a representative from the university of Idaho agricultural extension service shall be the fifth arbitrator. The five (5) member council shall select a chairman from its membership. The chairman shall conduct deliberations of the council and direct all of its other activities. Upon request by the chairman, the department may provide administrative support to the arbitration council.

(d) Investigation. Upon referral of a complaint for investigation the council shall make a prompt and full investigation of the matters complained of and report its findings and recommendations to the director within sixty (60) days of such referral or such later date as parties may determine.

(e) Scope of report. The report of the council shall include findings and recommendations as to investigation costs, if any, for settlement of a complaint.

(f) Authority of council. In the course of its investigation, the council or any of its members may:

(i) Examine the buyer and the seller on all matters which the council considers relevant.

(ii) Grow to production a representative sample of the seed through the facilities of the director or a designated university.

(iii) Submit seed samples for testing by state seed laboratory or appropriate laboratory.

(iv) Hold informal hearings at such time and place as the chairman may direct upon reasonable notice to all parties.

(v) Upon the chairman's request, call any person in for comments knowledgeable on any matter under investigation.

(vi) Assess the cost of conducting the investigation to the nonprevailing party or between the parties of a given complaint when deemed appropriate.

(vii) Include as the cost of investigation: travel, lodging and meals as established by the state, for any witness called by the council, and other administrative and secretarial expenses.

(g) Delegation. The council may delegate all or any part of any investigation to one (1) or more of its members. Any such delegated investigation shall be summarized in writing and considered by the council in its report.

(h) Compensation. The members of the council shall be compensated as provided in section 59-509(b), Idaho Code.

(i) Distribution of report. After the council has made its report the director shall promptly transmit the report by certified mail to all parties. [I.C., § 22-436, as added by 1989, ch. 370, § 2, p. 927; am. 1990, ch. 412, § 1, p. 1141; am. 1996, ch. 213, § 1, p. 690; am. 1996, ch. 214, § 2, p. 693; am. 2009, ch. 38, § 2, p. 109.]

STATUTORY NOTES

Amendments. — This section was amended by two 1996 acts — ch. 213, § 1, and ch. 214, § 2, both effective July 1, 1996 — which do not appear to conflict and have been compiled together.

The 1996 amendment, by ch. 213, § 1, deleted “Review Council” following “Seed Arbitration” in the catchline; in subsection (1), inserted a period following “arbitration” in the first sentence, in the second sentence, deleted “a tuber, plant or plant part to perform as represented, or when any buyer claims to have been damaged by the failure of” following “the failure of” and added the third sentence; in subsection (2), inserted a period following “requirement” in the first sentence, and in the language under “NOTICE OF REQUIRED ARBITRATION” inserted “with the Idaho Department of Agriculture” following “filing fee” and substituted “. The buyer shall notify and serve a copy of the complaint upon the seller” for “and notify seller of complaint”; in subsection (3), inserted a period following “arbitration”; deleted former subdivision (3)(d) which read, “Investigation cost. The costs of conducting the investigation will be borne by the nonprevailing party.”; in subsection (4), in the second sentence, substituted “six (6) members and five (5) alternate members” for “five (5) members and four (4) alternate members” and in the third sentence substituted “and an alternate shall serve as permanent members” for “shall serve as a permanent member”; added subdivision (4)(e) and the first paragraph of the language fol-

lowing subdivision (4)(e); in the second paragraph of the language following subdivision (4)(e) substituted “he, his” for “they, their” preceding “employer”; in subdivision (5)(a), in the third sentence, substituted “within such time as to permit inspection of the crops, plants or trees by the seed arbitration council or its representatives and by the dealer or seller from whom the seed was purchased” for “Except in case of seed which has not been planted, the claim shall be filed within such time as to permit inspection of the plants under field conditions” and added the last sentence; in subdivision (5)(e), inserted “investigation” preceding “costs”; in subdivision (5)(f)(v), substituted “any person” for “person(s)” and “any matter” for “matter(s)”; in subdivision (5)(f)(vi), substituted “or between the parties of a given complaint when deemed appropriate” for “of a given complaint”; and added subdivision (5)(f)(vii).

The 1996 amendment, by ch. 214, § 2, in subsection (1), inserted a period following “arbitration” in the first sentence, in the second sentence deleted “tuber,” following “failure of a”; in subsection (2), inserted a period following “requirement” in the first sentence; and in subsection (3), inserted a period following “arbitration”.

The 2009 amendment, by ch. 38, rewrote subsection (4) to the extent that a detailed comparison is impracticable; and rewrote subsection (5)(c), which formerly read: “The director shall refer the complaint and answer to the council for investigation, findings and recommendation.”

CHAPTER 5

SEED POTATOES

SECTION.

22-501. Definitions.

22-502. Packing and tagging.

22-503. Potatoes for planting.

22-504. Penalty for violations.

22-505. Rules.

SECTION.

22-506. Advisory committee.

22-507. Crop management areas.

22-508. Exemptions.

22-509. Title.

22-510. Seed potato arbitration.

22-501. Definitions. — When used in this chapter:

(1) "Department" means the department of agriculture of the state of Idaho.

(2) "Certified potatoes" means potatoes certified according to chapter 15, title 22, Idaho Code, the seed and plant certification act or a similar act of another state or country.

(3) "Director" means the director of the Idaho department of agriculture.

(4) "Distribute" means to offer for sale, sell, barter or otherwise supply potatoes or to supply, furnish or otherwise provide potatoes to a person.

(5) "Person" means any individual, partnership, corporation, firm, association or agent.

(6) "Potatoes" means potatoes (*Solanum tuberosum*) that may be sold for or used as seed potatoes. [1939, ch. 144, p. 261, no section number; am. 1996, ch. 215, § 1, p. 700; am. 2000, ch. 141, § 1, p. 369.]

STATUTORY NOTES

Cross References. — Seed and plant certification act, § 22-1501 et seq.

in parentheses so appeared in the law as enacted.

Compiler's Notes. — The words enclosed

22-502. Packing and tagging. — All potatoes sold or offered for sale as "Idaho certified seed potatoes" must be packed, tagged and sealed in accordance with the Idaho rules of certification as authorized under chapter 15, title 22, Idaho Code. [1939, ch. 144, § 2, p. 261; am. 1965, ch. 6, § 1, p. 8; am. 1996, ch. 215, § 2, p. 700.]

STATUTORY NOTES

Cross References. — State university agricultural and extension work, § 33-2901 et seq.

Effective Dates. — Section 2 of S.L. 1965, ch. 6 declared an emergency. Approved February 3, 1965.

RESEARCH REFERENCES

C.J.S. — 3 C.J.S., Agriculture, § 2.

22-503. Potatoes for planting. — (1) All potatoes offered for sale, sold or delivered under contract or distributed into or within the state of Idaho for planting in the state of Idaho by any person from any state, territory, or country shall be certified and shall be accompanied by a certificate of inspection and a plant health certificate, and shall include the description of the grade, the findings of all inspections of each lot of seed, noting the name and amount of any disease observed, and generation of the potatoes and shall show that the potatoes were packed, sealed, and tagged under the certification standards of the state, territory, or country in which they were produced. Seed being imported into Idaho shall meet or exceed the Idaho certification standards for certified seed potatoes according to the Idaho rules of certification as authorized under chapter 15, title 22, Idaho Code. Imported seed lots that exceed tolerances for that specific generation required for Idaho seed, shall be downgraded to the next acceptable

generation tolerances until rejection. Potatoes imported from any other state, country, or territory shall be certified and also be in compliance with other applicable rules of the department pertaining to potatoes.

(2) Idaho growers shall be allowed to plant uncertified potatoes grown by them as a part of their farming operation provided that they are no more than one (1) generation from their own certified parent seed potatoes. Uncertified potatoes planted by Idaho growers as provided for under this section must comply with all testing and any other conditions as set forth under this chapter and any rules promulgated pursuant to this chapter. [1939, ch. 144, § 3, p. 261; am. 1971, ch. 118, § 1, p. 401; am. 1979, ch. 181, § 1, p. 535; am. 1996, ch. 215, § 3, p. 700; am. 2000, ch. 141, § 2, p. 369; am. 2003, ch. 108, § 1, p. 346.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1971, ch. 118 declared an emergency. Approved March 16, 1971.

22-504. Penalty for violations. — (1) Any person who violates or fails to comply with any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than ten dollars (\$10.00) per hundred weight of potatoes in violation or be imprisoned in the county jail for not more than six (6) months or be subject to both such fine and imprisonment.

(2) Any person who violates or fails to comply with any of the provisions of this chapter or any rules promulgated under this chapter may be assessed a civil penalty by the department or its duly authorized agent of not more than ten dollars (\$10.00) per hundred weight of potatoes in violation for each offense and shall be liable for reasonable attorney's fees. Assessment of a civil penalty may be made in conjunction with any other department administrative action. No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to chapter 52, title 67, Idaho Code. If the department is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court. Any person against whom the department has assessed a civil penalty under the provisions of this chapter may, within thirty (30) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred. Moneys collected for violations shall be remitted to the agricultural [agriculture department] inspection account.

(3) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when he believes that the public interest will be best served by suitable warnings or other administrative action. [1939, ch. 144, § 4, p. 261; am. 1996, ch. 215, § 4, p. 700.]

STATUTORY NOTES

Cross References. — Agriculture department inspection account, § 22-104.

tion at the end of subsection (2) was added by the compiler.

Compiler's Notes. — The bracketed inser-

22-505. Rules. — The department is hereby authorized to promulgate rules that may be necessary for the efficient enforcement of the provisions of this chapter including, but not limited to, requirements for planting, testing, sampling, inspection, and compliance verification procedures. The department may by rules, establish a schedule of fees for services performed by the department in the administration of the rules. Receipts of these fees shall be deposited in the agricultural [agriculture department] inspections account created pursuant to section 22-105 [22-104], Idaho Code. [I.C., § 22-505, as added by 1996, ch. 215, § 5, p. 700.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions were added by the compiler to correct

the referenced account name and statutory citation.

22-506. Advisory committee. — In order to maintain close contact between the department and the potato industry there is hereby established an advisory committee to be appointed by the director. Any person or organization recognized by the potato industry may provide a nomination list of no more than two (2) individuals to the director. The committee shall be comprised of no more than twelve (12) individuals, one (1) of whom must be from the university of Idaho, and one (1) from the department. [I.C., § 22-506, as added by 1996, ch. 215, § 6, p. 700.]

22-507. Crop management areas. — Nothing in this chapter shall be interpreted in such a manner as to interfere with the enforcement or implementation of provisions of section 22-2017, Idaho Code, crop management areas, or rules promulgated thereunder. [I.C., § 22-507, as added by 1996, ch. 215, § 7, p. 700; am. 2007, ch. 51, § 1, p. 123.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 51, substituted "section 22-2017" for

"chapter 10, title 22" and "crop management areas" for "crop management zones."

22-508. Exemptions. — Upon application to the director, potato plantings of one (1) acre or less per variety are exempted from the certification requirements of this chapter. However, such plantings may at the discretion of the director be subject to any laboratory testing or field inspections as provided for by rule, at the owner's expense. [I.C., § 22-508, as added by 1996, ch. 215, § 8, p. 700.]

22-509. Title. — This chapter shall be known as: "The Idaho Seed Potato Act of 1996." [I.C., § 22-509, as added by 1996, ch. 215, § 9, p. 700.]

22-510. Seed potato arbitration. — (1) Requirement of arbitration. When any buyer claims to have been damaged by the failure of seed potatoes to perform as represented, or when any buyer claims to have been damaged by the failure of any seed potato to produce or perform as represented by the required label to be attached to such seed as prescribed in rules, or by warranty, or as a result of negligence, the buyer shall submit the claim to arbitration as provided in this section.

(2) Notice of required arbitration. In addition to the certification tag required under section 22-502, Idaho Code, conspicuous language calling attention to the requirement for arbitration under this section shall be referenced or included on a notice of required arbitration tag, or otherwise attached to the seed bag or package. A notice in the following form, or equivalent language, shall be sufficient.

NOTICE OF REQUIRED ARBITRATION

Under the seed laws of certain states, arbitration is required as a precondition of maintaining certain legal actions, counterclaims or defenses against a seller of seed. The buyer must file a complaint, along with the filing fee, with the State Department of Agriculture within such time as to permit inspection of the crops and notify seller of complaint by certified mail.

Arbitration shall not be required unless this notice is attached to the seed bag or package.

(3) Establishment of arbitration panel. Any individual or organization recognized by the potato industry in Idaho may provide a nomination list of five (5) names to the director. From that list of nominations, the director shall comprise a list consisting of fifteen (15) names from which the arbitration panel may be established.

(4) Procedures:

(a) Commencement. A buyer may invoke arbitration by filing a sworn complaint with the director together with a nonrefundable filing fee of one hundred dollars (\$100). The buyer shall serve a copy of the complaint upon the seller by certified mail. Except in cases of seed which has not been planted, the complaint shall be filed within such time as to permit effective inspection of the plants under field conditions.

(b) Seller's answer. Within twenty (20) days after receipt of a copy of the complaint, the seller shall file with the director an answer to the complaint and serve a copy of the answer upon the buyer by certified mail.

(c) Referral to arbitration panel. The complaint and answer shall be referred to a three (3) person arbitration panel. Each party shall select one (1) arbitrator from the arbitration panel established under the provisions of subsection (3) of this section. Those arbitrators shall select a third arbitrator from the director's list of nominees. Upon request by the chairman, the department may provide administrative support to the arbitration panel.

(d) Findings and recommendations. The panel is empowered, upon review of the buyer's complaint and the seller's answer, to conduct an investigation and make findings and recommendations.

(e) Investigation. Upon referral of a complaint for investigation, the panel shall make a prompt and full investigation of the matters complained of and report its findings and recommendations to the director within sixty (60) days of such referral or such later date as parties may determine.

(f) Scope of report. The report of the panel shall include findings and recommendations as to costs, if any, for settlement of a complaint.

(g) Authority of panel. In the course of its investigation, the panel or any of its members may:

(i) Question the buyer and the seller and any other person having knowledge of the matter under investigation.

(ii) Grow to production a representative sample of the seed through the facilities of the director or a designated university.

(iii) Submit seed samples for testing by the state seed laboratory or other appropriate laboratory.

(iv) Hold informal meetings or hearings at such time and place as the chairman may direct upon reasonable notice to all parties.

(v) Assess the cost of conducting the investigation to the nonprevailing party of a given complaint.

(h) After the investigation and the report of the panel has been released, either party may request at their own expense, a final determination by an independent mediator. If the parties cannot come to an agreement through mediation, no record of the arbitration findings will be discussed or used in a court of law against either side. [I.C., § 22-510, as added by 1996, ch. 214, § 3, p. 693.]

CHAPTER 6

COMMERCIAL FERTILIZERS

SECTION.

- 22-601. Title.
- 22-602. Administration.
- 22-603. Definitions.
- 22-604. Adoption of rules.
- 22-605. Registration of products and storage facilities.
- 22-606. Formulas.
- 22-607. Labels — Information required.
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SECTION.

- 22-615. Publication of information.
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- 22-624. Severability.
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- 22-626. Local legislation — Prohibition.

22-601. Title. — This chapter shall be known as the "Idaho Fertilizer Act of 2000." [I.C., § 22-601, as added by 2000, ch. 295, § 2, p. 1012.]

STATUTORY NOTES

Prior Laws. — The following sections were repealed by S.L. 2000, ch. 295, § 1, effective July 1, 2000:

22-601, which comprised I.C., § 22-601, as added by 1967, ch. 43, § 1, p. 74.
22-602, which comprised I.C., § 22-602, as

added by 1967, ch. 43, § 2, p. 74.

22-603, which comprised I.C., § 22-603, as added by 1967, ch. 43, § 3, p. 74.

22-604, which comprised I.C., § 22-604, as added by 1967, ch. 43, § 4, p. 74; am. 1992, ch. 69, § 1, p. 204.

22-605, which comprised I.C., § 22-605, as added by 1967, ch. 43, § 5, p. 74; am. 1976, ch. 91, § 1, p. 307.

22-606, which comprised I.C., § 22-606, as added by 1967, ch. 43, § 6, p. 74.

22-607, which comprised I.C., § 22-607, as added by 1967, ch. 43, § 7, p. 74.

22-608, which comprised I.C., § 22-608, as added by 1967, ch. 43, § 8, p. 74; am. 1974, ch. 18, § 10, p. 364; am. 1981, ch. 299, § 1, p. 619.

22-609, which comprised I.C., § 22-609, as added by 1967, ch. 43, § 9, p. 74; am. 1990, ch. 213, § 16, p. 480.

22-610, which comprised I.C., § 22-610, as added by 1967, ch. 43, § 10, p. 74.

22-611, which comprised I.C., § 22-611, as added by 1967, ch. 43, § 11, p. 74.

22-612, which comprised I.C., § 22-612, as added by 1967, ch. 43, § 12, p. 74.

22-613, which comprised I.C., § 22-613, as

added by 1967, ch. 43, § 13, p. 74.

22-614, which comprised I.C., § 22-614, as added by 1967, ch. 43, § 14, p. 74.

22-615, which comprised I.C., § 22-615, as added by 1967, ch. 43, § 15, p. 74.

22-616, which comprised I.C., § 22-616, as added by 1967, ch. 43, § 16, p. 74.

22-617, which comprised I.C., § 22-617, as added by 1967, ch. 43, § 17, p. 74.

22-618, which comprised I.C., § 22-618, as added by 1967, ch. 43, § 18, p. 74.

22-619, which comprised I.C., § 22-619, as added by 1967, ch. 43, § 19, p. 74; am. 1974, ch. 18, § 11, p. 364; am. 1991, ch. 31, § 1, p. 69.

22-620, which comprised I.C., § 22-620, as added by 1967, ch. 43, § 20, p. 74.

22-621, which comprised I.C., § 22-621, as added by 1967, ch. 43, § 21, p. 74.

22-622, which comprised I.C., § 22-622, as added by 1967, ch. 43, § 24, p. 74.

Another former §§ 22-601 — 22-612, which comprised S.L. 1931, ch. 188, §§ 1-12; I.C.A., §§ 22-601 — 22-612, as amended 1939, ch. 264, § 1; 1947, ch. 58, §§ 1-4; 1951, ch. 106, §§ 1-2; 1953, ch. 94, §§ 1-2, were repealed by S.L. 1967, ch. 43, § 22.

RESEARCH REFERENCES

A.L.R. — Products liability: Fertilizers, insecticides, pesticides, fungicides, weedkillers,

and the like or articles used in application thereof. 12 A.L.R.4th 462.

22-602. Administration. — The Idaho state department of agriculture, hereinafter referred to as the “department,” shall administer this chapter. [I.C., § 22-602, as added by 2000, ch. 295, § 2, p. 1012; am. 2001, ch. 147, § 1, p. 516.]

STATUTORY NOTES

Prior Laws. — Former § 22-602 was repealed. See Prior Laws, § 22-601.

22-603. Definitions. — When used in this chapter:

(1) “Biosolid(s)” means a primary organic solid material produced by wastewater treatment processes that can be beneficially recycled for its plant nutrient content and soil amending characteristics, as regulated under the code of federal regulations, 40 CFR 503, as amended.

(2) “Brand” means a term, design, or trademark used in connection with one (1) or several grades of fertilizer.

(3) “Calcium carbonate equivalent” means the acid-neutralizing capacity of an agricultural liming material expressed as a weight percentage of calcium carbonate.

(4) “Compost” means a biologically stable material derived from the composting process.

(5) "Composting" means the biological decomposition of organic matter. It is accomplished by mixing and piling in such a way to promote aerobic and/or anaerobic decay. The process inhibits pathogens, viable weed seeds and odors.

(6) "Coproduct" means a chemical substance produced for a commercial purpose during the manufacture, processing, use or disposal of another chemical substance or mixture.

(7) "Deficiency" means the amount of nutrient found by analysis to be less than that guaranteed, which may result from a lack of nutrient ingredients or from lack of uniformity.

(8) "Department" means the Idaho state department of agriculture or its authorized representative.

(9) "Distribute" means to import, consign, manufacture, produce, compound, mix, or blend fertilizer, or to offer for sale, sell, barter or otherwise distribute or supply fertilizer in this state.

(10) "Distributor" means any person who distributes.

(11) "Fertilizer" means any substance containing one (1) or more recognized plant nutrient which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, and includes limes and gypsum. It does not include unmanipulated animal manure and vegetable organic waste-derived material, or biosolids regulated under the code of federal regulations, 40 CFR 503, as amended.

(a) "Bulk fertilizer" means a fertilizer distributed in a nonpackaged form.

(b) "Customer formula fertilizer" means a mixture of fertilizer or materials of which each batch is mixed according to the specific instructions of the final purchaser.

(c) "Fertilizer material" means a fertilizer which either:

(i) Contains important quantities of no more than one (1) of the primary plant nutrients: nitrogen (N), phosphate (P_2O_5) and potash (K_2O), or

(ii) Has eighty-five percent (85%) or more of its plant nutrient content present in the form of a single chemical compound, or

(iii) Is derived from a plant or animal residue or byproduct or natural material deposit which has been processed in such a way that its content of plant nutrients has not been materially changed except by purification and concentration.

(d) "Micronutrient fertilizer" means a fertilizer that contains valuable concentrations of micronutrients, but does not contain valuable concentrations of total nitrogen (N), available phosphate (P_2O_5), soluble potash (K_2O), calcium (Ca), magnesium (Mg), or sulfur (S).

(e) "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials.

(f) "Packaged fertilizer" means fertilizers, either agricultural or specialty, distributed in nonbulk form.

(g) "Specialty fertilizer" means a fertilizer distributed for nonagricultural use.

(h) "Waste-derived fertilizer" includes any commercial fertilizer derived from an industrial byproduct, coproduct or other material that would

otherwise be disposed of if a market for reuse were not an option, but does not include fertilizers derived from biosolids or biosolid products regulated under the code of federal regulations, 40 CFR 503, as amended.

(12) "Grade" means the percentage of total nitrogen, available phosphate, and soluble potash stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis. Provided however, that specialty fertilizers may be guaranteed in fractional units of less than one percent (1%) of total nitrogen, available phosphate, and soluble potash: provided further, that fertilizer materials, bone meal, and similar materials may be guaranteed in fractional units.

(13) "Guaranteed analysis" means the minimum percentage of plant nutrients claimed, for a total nitrogen, available phosphate, or soluble potash fertilizer, consistent with the grade and in the following order and form:

- (a) Total nitrogen %
- Available phosphate %
- Soluble potash %

(b) Unless approved by the department, all fertilizer intended for agricultural use with a total nitrogen, available phosphate, or soluble potash guarantee shall contain five percent (5%) or more of available nitrogen, phosphate, or potash, singly, collectively, or in combination.

(c) For unacidulated mineral phosphatic materials and basic slag, the guaranteed analysis shall contain both total and available phosphate and the degree of fineness. For bone, tankage, and other organic phosphatic materials, the guaranteed analysis shall contain total and available phosphate.

(d) The guaranteed analysis for limes shall include the percentage of calcium or magnesium expressed as their carbonate; the calcium carbonate equivalent as determined by methods prescribed by the association of official analytical chemists, international (AOAC); and the minimum percentage of material that will pass respectively a one hundred (100) mesh, sixty (60) mesh, and ten (10) mesh sieve.

(e) The guarantees for nutrients other than total nitrogen, available phosphate and soluble potash shall be expressed in the form of the element. The source (oxides, salts, chelates, etc.) of such other nutrients may be required to be stated on the application for registration and shall be included on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the department. Other guarantees shall not be included with the guarantee for nutrients, but shall be listed separately as "nonnutrient substances." When any plant nutrients or other substances or compounds are guaranteed they shall be subject to inspection and analysis in accordance with the methods and rules prescribed by the department.

(f) In a fertilizer with the principal constituent of calcium sulfate (gypsum), the percentage of calcium sulfate ($\text{CaSO}_4\cdot 2\text{H}_2\text{O}$) shall be given along with the percentage of total sulfur (S).

(14) "Investigational allowance" means an allowance for variations inherent in the taking, preparation and analysis of an official sample of fertilizer.

(15) "Label" means the display of all written, printed, or graphic matter, upon the immediate container, or a statement accompanying a fertilizer.

(16) "Labeling" means all written, printed, or graphic matter, upon or accompanying any fertilizer, or advertisements, brochures, posters, and television and radio announcements used in promoting the sale of such fertilizer.

(17) "Lime" means a substance or a mixture of substances, the principal constituent of which is calcium carbonate (CaCO_3), calcium hydroxide (Ca(OH)_2), calcium oxide (CaO), magnesium carbonate (MgCO_3), magnesium hydroxide (Mg(OH)_2) or magnesium oxide (MgO), singly or combined, and capable of neutralizing soil acidity.

(18) "Manipulation" means actively processed or treated in any manner.

(19) "Manufacture" means to compound, produce, granulate, mix, blend, repackage, or otherwise alter the composition of fertilizer materials.

(20) "Micronutrient" means boron (B), chlorine (Cl), cobalt (Co), copper (Cu), iron (Fe), manganese (Mn), molybdenum (Mo), nickel (Ni), sodium (Na), and zinc (Zn).

(21) "Official sample" means any sample of fertilizer taken by the director or his authorized agent and designated as "official" by the department.

(22) "Organic waste-derived material" means grass clippings, leaves, weeds, bark, plantings, prunings and other vegetative wastes, wood wastes from logging and milling operations, and food wastes. "Organic waste-derived material" does not include products that contain biosolids as defined in this section.

(23) "Packaged fertilizer" means fertilizers, either agricultural or specialty, distributed in nonbulk form.

(24) "Percent" or "percentage" means the percentage by weight.

(25) "Person" means an individual, partnership, association, firm or corporation.

(26) "Primary nutrient" means total nitrogen, available phosphate, and soluble potash.

(27) "Production" means to compound or fabricate a fertilizer through a physical or chemical process. Production does not include mixing, blending, or repackaging fertilizer products.

(28) "Registrant" means the person who registers fertilizer under the provisions of this act.

(29) "Storage container" means a container, including a railcar, nurse tank or other container that is used or intended for the storage of bulk liquid or dry fertilizer. It does not include a mobile container at a storage facility for less than fifteen (15) days if this storage is incidental to the loading or unloading of a storage container at the bulk fertilizer storage facility. Storage container does not include underground storage containers or surface impoundments such as lined ponds or pits.

(30) "Storage facility" means a location at which undivided quantities of liquid bulk fertilizer in excess of five hundred (500) U.S. gallons or undivided quantities of dry bulk fertilizer in excess of fifty thousand (50,000) pounds are held in a storage container. Temporary field storage of less than thirty (30) days is not considered a storage facility.

(31) “Ton” means a net weight of two thousand (2,000) pounds avoirdupois.

(32) “Tonnage-only distributor” means any person who assumes the responsibility for inspection fees and reports as provided for in sections 22-608(1) and 22-609, Idaho Code. A tonnage-only distributor must register with the department on forms provided by the director. A tonnage-only distributor is subject to section 22-608, Idaho Code.

When not specifically stated in this section or otherwise designated by the department in rule, the department will be guided by the definitions of general terms, fertilizer materials and soil and plant amendment materials as set forth in the official publication of the association of American plant food control officials (AAPFCO) or the Merck Index, published by Merck Co., Inc. [I.C., § 22-603, as added by 2000, ch. 295, § 2, p. 1012; am. 2001, ch. 147, § 2, p. 516; am. 2008, ch. 131, § 1, p. 365.]

STATUTORY NOTES

Prior Laws. — Former § 22-603 was repealed. See Prior Laws, § 22-601.

Amendments. — The 2008 amendment, by ch. 131, in subsection (9), inserted “distribute or”; in paragraph (11)(g), substituted “nonagricultural use” for “nonfarm use”; in the introductory paragraph in subsection (13), inserted “consistent with the grade and”; in paragraph (13)(b), substituted “Unless approved by the department, all fertilizer” for “Any fertilizer”; in subsection (17), added “and capable of neutralizing soil acidity” at the end; in subsection (20), inserted “nickel (Ni)”; added present subsections (29), (30), and (32); and redesignated former subsection

(29) as subsection (31).

Compiler’s Notes. — The words enclosed in parentheses so appeared in the law as enacted.

The term “this act”, which appears in subsection (28), refers to S.L. 2000, ch. 295, codified as §§ 22-601 to 22-624.

For the association of official analytical chemists, international, see <http://aoac.org>.

For the association of American plant food control officials, referred to in the last paragraph, see <http://www.aapfco.org>.

For Merck Index, referred to in the last paragraph, see <http://www.merckbooks.com/minindex>.

22-604. Adoption of rules. — The department shall administer, enforce, and carry out the provisions of this chapter and may adopt rules necessary to carry out its purposes including, but not limited to, the proper use, handling, transportation, storage, display, distribution, sampling, records, analysis, form, minimum percentages, fertilizer ingredients, exempted materials, investigational allowances, definitions, labels, labeling, misbranding, mislabeling and disposal of fertilizers and their containers. The adoption of rules is subject to public hearing as prescribed by the Idaho administrative procedure act, chapter 52, title 67, Idaho Code. [I.C., § 22-604, as added by 2000, ch. 295, § 2, p. 1012; am. 2001, ch. 147, § 3, p. 516.]

STATUTORY NOTES

Prior Laws. — Former § 22-604 was repealed. See Prior Laws, § 22-601.

22-605. Registration of products and storage facilities. — (1) Registration of products.

(a) Each separately identifiable fertilizer product except individual customer-formula mixes shall be registered by the person who manufactures

or distributes fertilizer into or within the state of Idaho before being offered for sale, sold, or otherwise distributed into or within this state. Companies planning to mix customer-formula fertilizers shall include the statement "customer-formula mixes" or "CFM" on the registration application form. The application for registration shall be submitted to the department on forms furnished by the department, and shall be accompanied by a nonrefundable fee of twenty-five dollars (\$25.00) per separately identifiable fertilizer product. Upon approval by the department, a certificate of registration shall be furnished to the applicant. All registrations expire on December 31 of each year. The application shall include the following information:

- (i) The brand, grade and product name for each product;
 - (ii) The name and address of the registrant; and
 - (iii) A current label meeting the requirements of section 22-607, Idaho Code, for each product.
- (b) A distributor is not required to register any fertilizer that is already registered under this chapter, as long as the label remains unchanged.
- (c) If an application for renewal of the product registration provided for in this section is not postmarked by January 31 of any one (1) year, a penalty of ten dollars (\$10.00) per product shall be assessed and added to the original fee and shall be paid by the applicant before the renewal registration certificate is issued.
- (d) The department shall examine the fertilizer product registration application form and labels for conformance with the requirements of this chapter. If the application, information and appropriate labels are in proper form and contain all the required information, the fertilizer products shall be registered by the department and a certificate of registration shall be issued to the applicant. The department may refuse to register or, cancel the registration, of any fertilizer product which would be in violation of any provision of this chapter.
- (e) In reviewing the fertilizer product registration application, the department may consider experimental data, manufacturers' evaluations, data from agricultural experiment stations' product review evaluations, and other authoritative sources to substantiate labeling claims. The data shall be from statistically designed and analyzed trials representative of the soil, crops, and climatic conditions found in the northwestern area of the United States.
- (f) In determining whether approval of a label statement or guarantee of an ingredient is appropriate, the department may require the submission of a written statement describing the methodology of laboratory analysis utilized, the source of the ingredient material, and any reference material relied upon to support the label statement or guarantee of ingredient.
- (g) Any waste-derived fertilizer distributed as a single ingredient product or blended with other fertilizer ingredients must be identified as "waste-derived fertilizer" by the registrant in the application for registration.
- (h) The registrant of a waste-derived fertilizer shall state in the application for registration the levels of nonnutritive metals including, but not limited to, arsenic (As), cadmium (Cd), mercury (Hg), lead (Pb) and

selenium (Se). The registrant shall provide a laboratory report or other documentation verifying the levels of the nonnutritive metals in the waste-derived fertilizer. The registrant shall provide a new laboratory report upon a change of any nutrient source containing waste-derived material.

(i) Any person distributing commercial fertilizer into or within Idaho to an Idaho registrant or a tonnage-only distributor must be a registrant or a tonnage-only distributor.

(j) If a product is found being offered for sale, sold, or otherwise distributed into or within Idaho prior to registration, the department is authorized to assess a penalty of twenty-five dollars (\$25.00) on each product in addition to the annual registration fee as provided in this section.

(2) Registration of storage facilities.

(a) Distributors shall register each of their in-state storage facilities with the department. The application for registration shall be submitted to the department on forms furnished by the department and shall be accompanied by a nonrefundable fee of one hundred dollars (\$100) per distributor. Upon approval by the department, a certificate of registration shall be furnished to the applicant. All registrations expire on December 31 of each year. The application shall include the following information:

(i) The name and address of the registrant and location of storage facility;

(ii) Listing of storage containers by volume, per storage facility.

(b) If an application for renewal of the storage facility registration provided for in this section is not postmarked by January 31 of any one (1) year, a penalty of ten dollars (\$10.00) per storage facility shall be assessed and added to the original fee and shall be paid by the applicant before the renewal registration certificate is issued.

(c) The department shall be notified of the installation of any additional storage container or containers to a storage facility within thirty (30) days of installation.

(d) If the department is not notified within thirty (30) days of the installation of any additional storage container or containers, a penalty of fifty dollars (\$50.00) shall be assessed. [I.C., § 22-605, as added by 2000, ch. 295, § 2, p. 1012; am. 2001, ch. 147, § 4, p. 516; am. 2008, ch. 131, § 2, p. 369.]

STATUTORY NOTES

Prior Laws. — Former § 22-605 was repealed. See Prior Laws, § 22-601.

Amendments. — The 2008 amendment, by ch. 131, rewrote the section, revising pro-

visions relating to the registration of certain fertilizer products and to provide for the registration of storage facilities by fertilizer distributors.

22-606. Formulas. — The department may require submission of the complete formula of any fertilizer and the source of all ingredients if it is deemed necessary for the registration of any fertilizer product or the administration of this chapter. Any formula so submitted is exempt from disclosure to the public pursuant to section 9-340D(1) or (2), Idaho Code. [I.C., § 22-606, as added by 2000, ch. 295, § 2, p. 1012.]

STATUTORY NOTES

Prior Laws. — Former § 22-606 was repealed. See Prior Laws, § 22-601.

22-607. Labels — Information required. — (1) Any fertilizer distributed in this state in containers shall have placed on or affixed to the container a label setting forth in a clearly legible and conspicuous form the following information:

- (a) The net weight;
- (b) The brand and grade, provided that the grade shall not be required when no primary nutrients are claimed;
- (c) Product name;
- (d) Guaranteed analysis;
- (e) The name and address of the registrant, or manufacturer, or both;
- (f) The sources from which the guaranteed plant nutrients are derived; and
- (g) Directions for use of specialty fertilizers distributed to the end user.

(2) In the case of bulk shipments, this information in written or printed form, shall accompany delivery and be supplied to the purchaser.

(3) Each delivery of a customer-formula fertilizer shall contain those ingredients specified by the purchaser. The ingredients shall be shown on the statement or invoice with the amount contained therein, and a record of all invoices of customer-formula grade mixes shall be kept by the registrant for a period of thirty-six (36) months and shall be available to the department upon request; provided, that each delivery shall be accompanied by either a statement, invoice, delivery slip, or label if bagged, containing the following information:

- (a) The net weight;
- (b) The guaranteed analysis or evidence of grade which may be stated to the nearest tenth of a percent or to the next lower whole number, or weight and grade of each ingredient;
- (c) The name and address of the registrant or manufacturer, or both; and
- (d) The name and address of the purchaser. [I.C., § 22-607, as added by 2000, ch. 295, § 2, p. 1012; am. 2008, ch. 131, § 3, p. 371.]

STATUTORY NOTES

Prior Laws. — Former § 22-607 was repealed. See Prior Laws, § 22-601.

Amendments. — The 2008 amendment, by ch. 131, added the proviso in paragraph (1)(b); added paragraphs (1)(c), (1)(d), and (1)(g) and redesignated former paragraphs (1)(c) and (1)(d) as present paragraphs (1)(e) and (1)(f); in the introductory paragraph in subsection (3), substituted “thirty-six (36)

months” for “six (6) months; deleted former paragraph (3)(b), which formerly read: “The brand”, and redesignated the subsequent paragraphs; in paragraph (3)(c), added “or weight and grade of each ingredient”; and deleted former paragraph (3)(f), which read: “The sources from which the guaranteed plant nutrients are derived.”

22-608. Inspection fees. — (1) There shall be paid to the department for all fertilizers sold or distributed in this state in quantities of more than twenty-five (25) pounds an inspection fee at the rate of thirty-five cents (35¢)

per ton by the product registrant. Another registrant or a tonnage-only distributor may assume responsibility for the inspection fee. Except that:

(a) No fee shall be paid on commercial fertilizer if the payment has been made by a previous distributor.

(b) No fee shall be paid on a customer-formula fertilizer if the inspection fee is paid on the commercial fertilizers that are used as ingredients therein.

(c) No fee shall be paid on commercial fertilizers that are used as ingredients for the manufacture of commercial fertilizers.

(d) If the fee has already been paid, credit shall be given for such payment.

(2) Every registrant who distributes fertilizer into or within the state shall file with the department a semiannual statement for the reporting period setting forth the number of net tons of each fertilizer so distributed into or within this state during such period. The statement is due on or before thirty (30) days following the close of the filing period. Upon filing the statement, the registrant shall pay the inspection fee at the rate provided in this section. If the tonnage report is not filed and the inspection fee is not paid within thirty (30) days after the end of the specified filing period, a collection fee of ten percent (10%) of the amount due, or twenty-five dollars (\$25.00), whichever is greater, shall be assessed against the registrant and added to the amount due.

(3) When more than one (1) person is involved in the distribution of a fertilizer, the last person who has the fertilizer registered or who has distributed the fertilizer to a nonregistrant, dealer, or consumer is responsible for reporting the tonnage and paying the inspection fee, unless the report and payment is made by a prior distributor of the fertilizer. The registrant has the ultimate responsibility for the payment of inspection fees.

(4) Records of the number of net tons of each fertilizer so distributed in this state shall be maintained for a period of five (5) years. The director shall have the right to examine such records to verify the reported tonnage of fertilizer distributed in this state.

(5) A minimum inspection fee shall be fifteen dollars (\$15.00) per reporting period.

(6) On individual packages of fertilizer containing twenty-five (25) pounds or less there shall be paid, in lieu of the inspection fee, an annual registration fee of twenty-five dollars (\$25.00) for each separately identifiable product sold or distributed. Where a person distributes fertilizer in packages of twenty-five (25) pounds or less and in packages of over twenty-five (25) pounds, the annual fee shall apply only to that portion distributed in packages of twenty-five (25) pounds or less.

(7) Fees so collected shall be used for the payment of the costs of inspection, sampling and analysis, and other expenses necessary for the administration of this chapter. [I.C., § 22-608, as added by 2000, ch. 295, § 2, p. 1012; am. 2008, ch. 131, § 4, p. 372.]

STATUTORY NOTES

Prior Laws. — Former § 22-608 was repealed. See Prior Laws, § 22-601.

Amendments. — The 2008 amendment, by ch. 131, in the first sentence of the introductory paragraph in subsection (1), substituted “thirty-five cents (35¢)” for “fifteen cents (15¢)”, and added “by the product registrant,” and added the second sentence and “Except

that”; added paragraphs (1)(a) through (1)(d); in the first sentence in subsection (2), twice substituted “into or within” for “in”; in subsection (5), substituted “fifteen dollars (\$15.00)” for “five dollars (\$5.00)”; and in the first sentence in subsection (6), deleted “of each brand” preceding “sold or distributed.”

22-609. Tonnage reports. — (1) The registrant or tonnage-only distributor distributing or selling fertilizer to a nonregistrant or consumer shall furnish to the department a report showing the amount (in tons) of each grade of fertilizer, and the form in which the fertilizer was distributed (dry or liquid). In the case of fertilizer sold to an intermediate distributor, the registrant, tonnage-only distributor, or distributor shall list the name, address, telephone number, and amount (in tons) of each fertilizer product sold to each intermediate distributor.

(2) Information furnished to the department under this section is exempt from disclosure under section 9-340D(1) or (2), Idaho Code, if the disclosure would divulge the operation of any person. [I.C., § 22-609, as added by 2000, ch. 295, § 2, p. 1012; am. 2008, ch. 131, § 5, p. 373.]

STATUTORY NOTES

Prior Laws. — Former § 22-609 was repealed. See Prior Laws, § 22-601.

Amendments. — The 2008 amendment, by ch. 131, in subsection (1), twice inserted “tonnage-only distributor.”

Compiler’s Notes. — The words enclosed in parentheses so appeared in the law as enacted.

22-610. Inspection — Sampling. — (1) The department shall inspect, sample, analyze, and test fertilizers distributed within this state, at a time and place and to the extent the department deems necessary, to determine whether the fertilizers comply with this chapter. The department may stop any commercial vehicle transporting fertilizers on the public highways and direct it to the nearest scales approved by the department to check weights of fertilizers being delivered. The department may also, upon presentation of proper identification, enter any distributor’s premises, including any vehicle of transport, at all reasonable times in order to have access to fertilizers for sampling and to examine and make copies of records relating to their distribution.

(2) The methods of sampling and analysis shall be those adopted by the department from officially recognized sources including, but not limited to, the association of American plant food control officials (AAPFCO) and the association of official analytical chemists, international (AOAC).

(3) The department, in determining for administrative purposes whether a fertilizer is deficient in any component or total nutrients, shall be guided solely by the official sample as defined in section 22-603(21), Idaho Code, and obtained and analyzed as provided for in this section.

(4) When the inspection and analysis of an official sample has been made, the department shall forward the results of the analysis to the distributor and manufacturer, and to the purchaser upon request. Upon written request and within thirty (30) days of the results of analysis, the department shall furnish to the distributor and/or manufacturer a portion of the sample concerned.

(5) If analyses of samples made by the department indicate deficiencies in the fertilizer examined, below guaranteed analysis, and in excess of the tolerances specified by rules promulgated under this chapter, the department shall immediately notify the manufacturer and/or distributor of the fertilizer of the results of the analyses. The manufacturer or seller of the fertilizer may, upon written request, obtain from the department a portion of the sample(s) in question. If he fails to agree with the analyses of the department, he may request an umpire who shall be one (1) of a list of not less than three (3) public analysts of recognized ability in fertilizer analyses, who shall be named by the department. The umpire analyses shall be made at the expense of the manufacturer or seller requesting the same. If the umpire agrees more closely with the department, the figures of the department shall be considered correct. If the umpire agrees more closely with the figures of the manufacturer or distributor, then the figures of the manufacturer or distributor shall be considered correct.

(6) Analysis of an official sample by the department shall be accepted as prima facie evidence by any court of competent jurisdiction. [I.C., § 22-610, as added by 2000, ch. 295, § 2, p. 1012; am. 2001, ch. 147, § 5, p. 516; am. 2008, ch. 131, § 6, p. 373.]

STATUTORY NOTES

Prior Laws. — Former § 22-610 was repealed. See Prior Laws, § 22-601.

Amendments. — The 2008 amendment, by ch. 131, in the last sentence in subsection (1), inserted “for sampling” and “examine and make copies of.”

Compiler's Notes. — For the association of official analytical chemists, international, see <http://aoac.org>.

For the association of American plant food control officials, see <http://www.aapfco.org>.

22-611. Penalties. — (1) If the analysis shows that any fertilizer deviates from the guaranteed analysis in any plant nutrient, micronutrient, or in total nutrients, a penalty shall be assessed in favor of the department at the rate of three (3) times the value of the deficiency or twenty-five dollars (\$25.00), whichever is greater, when the deviation exceeds the tolerances established by rules promulgated under this chapter. Provided, that penalties for any specialty fertilizer that deviates from the guaranteed analysis in any plant nutrient, micronutrient, or in total nutrients shall be determined as authorized under section 22-619, Idaho Code, and rules promulgated pursuant to this chapter.

(2) All penalties assessed under this section or any rule hereunder on any one (1) fertilizer, represented by the sample analyzed, shall be paid to the department within three (3) months after the date of notice from the department to the registrant. The department shall deposit the amount of the penalty into the “commercial feed and fertilizer fund.”

(3) Nothing contained in this section or any rule hereunder shall prevent any person from appealing to a court of competent jurisdiction for a judgment as to the justification of such penalties imposed under subsections (1) and (2) of this section.

(4) Penalties payable as provided for in subsections (1) and (2) of this section or any rule hereunder shall in no manner be construed as limiting the consumer's right to bring a civil action in damage against the registrant paying the penalties.

(5) Penalties for short weights, both packaged and bulk, shall be assessed at the rate of three (3) times the invoiced value if the deficiency exceeds the tolerances established by rule. [I.C., § 22-611, as added by 2000, ch. 295, § 2, p. 1012; am. 2004, ch. 108, § 1, p. 382.]

STATUTORY NOTES

Cross References. — Commercial feed and fertilizer fund, § 22-620.

Prior Laws. — Former § 22-611 was repealed. See Prior Laws, § 22-601.

22-612. Assessment of penalties. — For the purpose of initially determining the commercial value to be applied under the provisions of section 22-611, Idaho Code, the department shall determine and publish annually the values per unit of nitrogen, available phosphate, soluble potash, secondary elements and micro-elements used in this state. The values so determined and published shall be used in determining and assessing penalties as authorized under section 22-611, Idaho Code. [I.C., § 22-612, as added by 2000, ch. 295, § 2, p. 1012; am. 2004, ch. 108, § 2, p. 382.]

STATUTORY NOTES

Prior Laws. — Former § 22-612 was repealed. See Prior Laws, § 22-601.

22-613. Misbranding. — No person shall distribute a misbranded fertilizer. A fertilizer is misbranded if:

- (1) The labeling is false or misleading;
- (2) It is distributed under the name of another fertilizer product;
- (3) It is not labeled as required in section 22-607, Idaho Code, and in accordance with rules prescribed under this chapter; or
- (4) It purports to be or is represented as a fertilizer, or is represented as containing a plant nutrient or fertilizer unless such plant nutrient or fertilizer conforms to the definition of identity, if any, prescribed by rule of the department. In adopting such rules the department shall give due regard to commonly accepted definitions and official fertilizer terms as stated or provided for in section 22-603, Idaho Code. [I.C., § 22-613, as added by 2000, ch. 295, § 2, p. 1012; am. 2001, ch. 147, § 6, p. 516.]

STATUTORY NOTES

Prior Laws. — Former § 22-613 was repealed. See Prior Laws, § 22-601.

22-614. Adulteration. — No person shall distribute an adulterated fertilizer product. A fertilizer is adulterated if:

(1) It contains any deleterious or harmful substance in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil, or water when applied in accordance with directions for use on the label; or, if adequate warning statements or directions for use which may be necessary to protect plant life, animals, humans, aquatic life, soil, or water are not shown upon the label;

(2) Its composition falls below or differs from that which it is purported to possess by its labeling; or

(3) It contains unwanted crop seed or weed seed. [I.C., § 22-614, as added by 2000, ch. 295, § 2, p. 1012.]

STATUTORY NOTES

Prior Laws. — Former § 22-614 was repealed. See Prior Laws, § 22-601.

22-615. Publication of information. — The department shall publish at least annually and in a form it deems proper: the total tonnage of fertilizer distributed, the number of total official samples analyzed and the number of deficient official samples analyzed, and any other information the department deems fit. [I.C., § 22-615, as added by 2000, ch. 295, § 2, p. 1012.]

STATUTORY NOTES

Prior Laws. — Former § 22-615 was repealed. See Prior Laws, § 22-601.

22-616. “Stop sale” orders. — The department may issue and enforce a written or printed “stop sale, use, or removal” order to the distributor, owner or custodian of any fertilizer and hold the fertilizer, or order it held, at a designated place when the department finds the fertilizer is being offered for sale in violation of this chapter, until the law has been complied with and the fertilizer is released in writing by the department, or the violation has been otherwise legally disposed of by written authority. The owner or custodian of any fertilizer that has been issued a “stop sale, use, or removal” order shall remedy the violations within ninety (90) days, unless the department grants a written extension. The department shall release the fertilizer so withdrawn when the requirements of this chapter have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid. [I.C., § 22-616, as added by 2000, ch. 295, § 2, p. 1012; am. 2001, ch. 147, § 7, p. 516.]

STATUTORY NOTES

Prior Laws. — Former § 22-616 was repealed. See Prior Laws, § 22-601.

22-617. Complaint for seizure — Hearing. — Any fertilizer that does not comply with this chapter is subject to seizure on complaint of the department to a court of competent jurisdiction in the geographic area in which the fertilizer is located. If the court finds the fertilizer to be in violation of this chapter and orders the condemnation of the fertilizer, the fertilizer shall be disposed of in any manner consistent with the quality of the fertilizer and the laws of the state; provided, that in no instance shall the disposition of the fertilizer be ordered by a court of competent jurisdiction without first giving the claimant an opportunity to apply to the court for release of the fertilizer or for permission to process or relabel the fertilizer to bring it into compliance with this chapter. [I.C., § 22-617, as added by 2000, ch. 295, § 2, p. 1012.]

STATUTORY NOTES

Prior Laws. — Former § 22-617 was repealed. See Prior Laws, § 22-601.

22-618. Violations. — It is unlawful for any person to:

- (1) Distribute a misbranded fertilizer;
- (2) Fail, refuse or neglect to place upon or attach to each container of distributed fertilizer a label containing the information required by this chapter;
- (3) Fail, refuse or neglect to deliver to a purchaser of bulk fertilizer a statement containing the information required by this chapter;
- (4) Distribute a fertilizer which has not been registered with the department;
- (5) Distribute a fertilizer containing viable seeds unless serving a desirable purpose and appropriately labeled;
- (6) Distribute an adulterated fertilizer;
- (7) Distribute a fertilizer weighing less than that which it is purported to weigh;
- (8) Distribute a fertilizer different from the guaranteed analysis purported on the label; or
- (9) Fail or refuse to provide, keep or maintain records and information as required by this chapter. [I.C., § 22-618, as added by 2000, ch. 295, § 2, p. 1012.]

STATUTORY NOTES

Prior Laws. — Former § 22-618 was repealed. See Prior Laws, § 22-601.

22-619. Remedies for violations. — (1) Any person convicted of violating any of this chapter or the rules promulgated thereunder or who

impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the director or a duly authorized agent from the performance of their duty in connection with this chapter, is guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500) for the first violation, and not more than one thousand five hundred dollars (\$1,500) for a subsequent violation. In all prosecutions under this chapter involving the composition of a lot of commercial fertilizer, a certified copy of the official analysis signed by the director or his duly authorized agent shall be accepted as prima facie evidence of the composition.

(2) Any person who violates or fails to comply with this chapter or any rules promulgated thereunder may be assessed a civil penalty by the department or its duly authorized agent of not more than ten thousand dollars (\$10,000) for each offense and shall be liable for reasonable attorney's fees. Assessment of a civil penalty may be made in conjunction with any other department administrative action. No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act, chapter 52, title 67, Idaho Code. If the director is unable to collect the penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court. Any person against whom the director has assessed a civil penalty under the provisions of this section may, within thirty (30) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred.

(3) Nothing in this chapter requires the director or a duly authorized representative to report minor violations of the chapter for prosecution, or for the institution of seizure proceedings, when the director believes that the public interest will be best served by a suitable notice of warning in writing.

(4) Each prosecuting attorney to whom any violation is reported shall cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the director reports a violation for such prosecution, an opportunity shall be given the distributor to present his view to the director.

(5) The director may apply for and the court is authorized to grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule promulgated under the chapter notwithstanding the existence of other remedies at law. Said injunction shall be issued without bond. [I.C., § 22-619, as added by 2000, ch. 295, § 2, p. 1012; am. 2001, ch. 147, § 8, p. 516.]

STATUTORY NOTES

Prior Laws. — Former § 22-619 was repealed. See Prior Laws, § 22-601.

22-620. Use of funds received. — All moneys received by the director from the registration of various fertilizers and from the payment to him of moneys derived from the registration and inspection fees charged on such

fertilizers, and moneys collected for a violation(s) of this chapter or rules promulgated thereunder, shall be paid into the state treasury and placed in a fund to be known as the “commercial feed and fertilizer fund.” Moneys in the commercial feed and fertilizer fund are continuously appropriated for the purposes of carrying out the provisions of this chapter. [I.C., § 22-620, as added by 2000, ch. 295, § 2, p. 1012; am. 2008, ch. 131, § 7, p. 374.]

STATUTORY NOTES

Prior Laws. — Former § 22-620 was repealed. See Prior Laws, § 22-601. by ch. 131, deleted “brands of” preceding the first occurrence of “fertilizers.”

Amendments. — The 2008 amendment,

22-621. Cooperation with other governmental agencies. — The director may cooperate with and enter into agreements with other governmental agencies, whether of this state, other states, or agencies of the federal government, and with private associations, in order to carry out the purposes of this chapter. [I.C., § 22-621, as added by 2000, ch. 295, § 2, p. 1012.]

STATUTORY NOTES

Prior Laws. — Former § 22-621 was repealed. See Prior Laws, § 22-601.

22-622. No affect on existing liability. — The enactment of this chapter does not terminate or modify any civil or criminal liability which already exists on July 1, 2000. [I.C., § 22-622, as added by 2000, ch. 295, § 2, p. 1012.]

STATUTORY NOTES

Prior Laws. — Former § 22-622 was repealed. See Prior Laws, § 22-601.

22-623. Not applicable to wholesale transactions. — Nothing in this chapter restricts or precludes sales or exchanges of fertilizers to each other by importers, manufacturers, or manipulators who mix fertilizer materials for sale or prevents the free and unrestricted shipments of fertilizer to manufacturers or manipulators who have registered their products as required by this chapter. [I.C., § 22-623, as added by 2000, ch. 295, § 2, p. 1012.]

22-624. Severability. — If any clause, sentence, paragraph, or part of this chapter is judged invalid by any court of competent jurisdiction, the judgment shall not affect, impair, or invalidate the remainder of the chapter, but shall be confined in its operation to the clause, sentence, paragraph, or part of the chapter directly involved in the controversy in which the judgment has been rendered. [I.C., § 22-624, as added by 2000, ch. 295, § 2, p. 1012.]

22-625. Statements of uniform interpretation and policy. — When not otherwise stated in this chapter or rule adopted under this chapter, the statements of uniform interpretation and policy as adopted in the annual official publication of the association of american plant food control officials (AAPFCO) shall guide the department when making decisions in the areas covered by AAPFCO statements of uniform interpretation and policy. [I.C., § 22-625, as added by 2001, ch. 147, § 9, p. 516.]

STATUTORY NOTES

Compiler's Notes. — For the association of American plant food control officials, see <http://www.aapfco.org>.

22-626. Local legislation — Prohibition. — (1) No local government entity including, but not limited to, any city, county, township, or municipal corporation or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state of Idaho, shall:

(a) Regulate the registration, packaging, labeling, sale, storage, distribution, use and application of fertilizers;

(b) Adopt or continue in effect local legislation relating to the registration, packaging, labeling, sale, storage, distribution, use or application of fertilizers.

(2) Ordinances adopted by the local government entity in violation of this section are void and unenforceable.

(3) The provisions of subsections (1) and (2) of this section shall not preempt county or city local zoning ordinances governing the physical location or siting of fertilizer manufacturing, storage and sales facilities or protecting the quality of ground water or surface water in accordance with applicable state and federal law. [I.C., § 22-626, as added by 2005, ch. 387, § 1, p. 1248.]

CHAPTER 7

FARM MARKETING

SECTION.

22-701. Farm marketing subject to state regulation — Farm products defined.

22-702. Standards for farm products and receptacles.

22-703. Sale of graded and ungraded products.

SECTION.

22-703A. Retail sales of onions.

22-704. Inspectors — Appointment — Suspension or removal.

22-705. Appeal from classification.

22-706. Certificate as prima facie evidence of classification.

22-707. Penalty for violation.

22-701. Farm marketing subject to state regulation — Farm products defined. — The business of marketing farm products in this state is hereby declared to be affected with a public interest and to be subject to regulation and control by the state. The term “farm products” within the meaning of this section shall be deemed to mean all products, except livestock, grown in garden, on farm, ranch, or orchard, including poultry

and poultry products, butter, cream, cheese and all other dairy products. [1917, ch. 24, § 1k, p. 64; compiled and reen. C.L. 79:10; C.S., § 2031; a.m. 1923, ch. 50, § 1, p. 57; I.C.A., § 22-701.]

STATUTORY NOTES

Cross References. — Cooperative Marketing Act, § 22-2601 et seq.

Sanitary and marketing regulations relating to dairy products, title 37, chapters 3 through 12.

Compiler's Notes. — The law as enacted in 1915, ch. 71, p. 180, reen. C.L. 79:1-9, created the office of director of farm markets.

S.L. 1919, ch. 8, § 51, p. 69 repealed C.L. 79:1-5, 7-9; § 38 of the same act (§ 67-3401 herein) abolished the office of director of farm

markets; and § 26 (§ 67-2601 herein) vested his powers and duties in the department of agriculture. However, § 26 of S.L. 1919, ch. 8, was repealed by S.L. 1974, ch. 18, § 1 and § 2 of S.L. 1974, ch. 18 created the Department of Agriculture and provided for its organization (§§ 22-101 — 22-107). "Department of agriculture" has been substituted in the text for "director of farm markets" where the change is appropriate under the above legislation.

JUDICIAL DECISIONS

ANALYSIS

Product grades or standards.

— Scope.

Product Grades or Standards.

This chapter does not prohibit the sale of farm products unless of a certain grade or standard, but merely requires such an article when sold or offered for sale in an established receptacle to be branded as to grade and to conform thereto, and the said regulations thereunder do not apply to articles when not packed in such receptacles. *Marshall v. Department of Agric.*, 44 Idaho 440, 258 P. 171 (1927).

Whether the commissioner of agriculture abused his discretion in limiting the number of standards under which potatoes should be graded and labeled involves a question of fact which the court cannot decide in the absence of evidence. *Marshall v. Department of Agric.*, 44 Idaho 440, 258 P. 171 (1927).

State may establish reasonable grades or

standards for farm products when sold in receptacles or containers usually and ordinarily employed, and require that such products when so packed for sale conform to the grades or standards so established. *Marshall v. Department of Agric.*, 44 Idaho 440, 258 P. 171 (1927).

— Scope.

The standards prescribed by the commissioner of agriculture under which potatoes should be graded and labeled for sale must be sufficiently comprehensive to permit the sale of potatoes usually and ordinarily grown in the various producing sections of the state without any unnecessary interference with the unquestioned right to sell such products. *Marshall v. Department of Agric.*, 44 Idaho 440, 258 P. 171 (1927).

RESEARCH REFERENCES

Am. Jur. — 3 Am. Jur. 2d, Agriculture, § 51.

C.J.S. — 3 C.J.S., Agriculture, § 6.

22-702. Standards for farm products and receptacles. — After investigation and public hearing the department of agriculture may, from time to time, as far as practicable, establish and promulgate standards for open and closed receptacles for farm products and standards for the grade and other classification of farm products, by which their quantity, quality or value may be determined, and prescribe and promulgate rules and regulations governing the marks, brands and labels which may be required upon receptacles for farm products for the purpose of showing the name and address of the producer or packer, the quantity, nature and quality of the

product, or any of them, and for the purpose of preventing deception in reference thereto; provided, that any standard for any farm product or receptacle therefor or any requirement for making receptacles for farm products now or hereafter established under authority of the congress of the United States, shall forthwith, as far as applicable and practicable, be established or prescribed and promulgated by the department as the official standard or requirement in this state. [1917, ch. 24, § 1/, p. 64; reen. C.L. 79:11; C.S., § 2032; I.C.A., § 22-702; am. 1969, ch. 28, § 1, p. 53.]

JUDICIAL DECISIONS

ANALYSIS

Interstate commerce.

Product grades or standards.

—Application.

—Limitation on.

—Scope.

Interstate Commerce.

A state may regulate the disposal of state products, though the regulations incidentally affect interstate commerce; and an act regulating potato sales and exempting growers during certain months is not a burden thereon, nor is it an arbitrary classification. *Detweiler v. Welch*, 46 F.2d 75 (9th Cir. 1930).

Product Grades or Standards.

—Application.

This chapter does not prohibit the sale of farm products, unless of a certain grade or standard, but merely requires such an article when sold or offered for sale in an established receptacle to be branded as to grade and to conform thereto; the said regulations thereunder do not apply to articles when not packed in such receptacles. *Marshall v. Department of Agric.*, 44 Idaho 440, 258 P. 171 (1927).

State may establish reasonable grades or standards for farm products when sold in receptacles or containers usually and ordi-

narily employed and require that such products when so packed for sale conform to the grades or standards so established. *Marshall v. Department of Agric.*, 44 Idaho 440, 258 P. 171 (1927).

—Limitation On.

Whether the commissioner of agriculture abused his discretion in limiting the number of standards under which potatoes should be graded and labeled involves a question of fact which the court cannot decide in the absence of evidence. *Marshall v. Department of Agric.*, 44 Idaho 440, 258 P. 171 (1927).

—Scope.

The standards prescribed by the commissioner of agriculture under which potatoes should be graded and labeled for sale must be sufficiently comprehensive to permit the sale of potatoes usually and ordinarily grown in the various producing sections of the state without any unnecessary interference with the unquestioned right to sell such products. *Marshall v. Department of Agric.*, 44 Idaho 440, 258 P. 171 (1927).

22-703. Sale of graded and ungraded products. — Whenever any standard for the grade or other classification of any farm product becomes effective under this chapter, no person thereafter shall pack for sale, offer to sell or sell within this state any such farm product to which such standard is applicable unless it conforms to the standard, subject to such reasonable variations therefrom as may be allowed in the rules and regulations made under this chapter: provided, that any farm product may be packed for sale, offered for sale or sold without conformity to the standard or grade or other classification applicable thereto when such product will be consumed or used for manufacturing purposes wholly within this state, if it is not specifically described as state graded or packed under state standard, in accordance with such regulations as the department of agriculture may

prescribe. [1917, ch. 24, § 1m, p. 64; reen. C.L. 79:12; am. 1919, ch. 165, § 1, p. 533; C.S., § 2033; I.C.A., § 22-703.]

STATUTORY NOTES

Cross References. — Appeal from classification, § 22-705.

JUDICIAL DECISIONS

ANALYSIS

Product grades or standards.

- Packaging.
- Limitation on.
- Scope.

Product Grades or Standards.

— Packaging.

This chapter does not prohibit the sale of farm products unless of a certain grade or standard, but merely requires such an article when sold or offered for sale in an established receptacle to be branded as to grade and to conform thereto, and the said regulations thereunder do not apply to articles when not packed in such receptacles. *Marshall v. Department of Agric.*, 44 Idaho 440, 258 P. 171 (1927).

State may establish reasonable grades or standards for farm products when sold in receptacles or containers usually and ordinarily employed and require that such products when so packed for sale conform to the grades or standards so established. *Marshall v. Department of Agric.*, 44 Idaho 440, 258 P. 171 (1927).

— Limitation On.

Whether the commissioner of agriculture abused his discretion in limiting the number of standards under which potatoes should be graded and labeled involves a question of fact which the court cannot decide in the absence of evidence. *Marshall v. Department of Agric.*, 44 Idaho 440, 258 P. 171 (1927).

— Scope.

The standards prescribed by the commissioner of agriculture under which potatoes should be graded and labeled for sale must be sufficiently comprehensive to permit the sale of potatoes usually and ordinarily grown in the various producing sections of the state without any unnecessary interference with the unquestioned right to sell such products. *Marshall v. Department of Agric.*, 44 Idaho 440, 258 P. 171 (1927).

22-703A. Retail sales of onions. — (1) All onions sold to the consumer by retail stores in this state shall be graded, sized and marked in accordance with United States standards for grades of onions. Nothing in the provisions of this section shall prohibit the sale of bulk onions to the consumer in retail stores if such onions are clearly identified to the consumer as to grade, size and state of origin providing, however, that locally grown onions need not comply with the above standards if clearly marked **UNGRADED**.

(2) The department of agriculture may inspect all onions offered for sale in retail stores, and at all wholesale distributors or onion dealers selling or offering onions for sale to retail outlets. The purpose of the inspections shall be to ensure that onions offered for sale are properly identified as to grade and size and are within the standards established by the United States for grades of onions. Any inspectors appointed by the department may order the removal or regrading and remarking of any onions which are misbranded or mismarked or which no longer meet the required standards of the grade.

(3) The department of agriculture may promulgate rules and regulations, in accordance with chapter 52, title 67, Idaho Code, necessary to enforce the provisions of this section.

(4) The department shall be entitled to injunctive relief against any and all violators of the provisions of this section or of any rules and regulations promulgated pursuant to this section. The department may recover any and all damages of any character resulting from such violation or violations. [I.C., § 22-703A, as added by 1982, ch. 85, § 1, p. 158.]

22-704. Inspectors — Appointment — Suspension or removal. —

Upon application of any owner or person, firm, corporation or association in charge of farm products, the department of agriculture is authorized to appoint, license or designate persons to inspect and classify such farm products and to certify as to the grade or other classification thereof, in accordance with the standards made effective under this chapter, and shall fix, assess and collect or cause to be collected the fees for such services. Whenever, after opportunity for a hearing is afforded to any person appointed, licensed or designated under this section, it is determined by the department that such person has failed to classify farm products correctly, in accordance with the standards established therefor under this chapter, or has violated any provision of this chapter or of the rules and regulations made hereunder, the department may suspend or revoke the appointment, license or designation of such person. Pending investigation, the department may suspend or revoke any such appointment, license or designation temporarily without hearing. [1917, ch. 24, § 1n, p. 65; reen. C.L. 79:13; C.S., § 2034; I.C.A., § 22-704.]

JUDICIAL DECISIONS

ANALYSIS

Product grades or standards.

Limitation on.

—Scope.

Product Grades or Standards.

This chapter does not prohibit the sale of farm products unless of a certain grade or standard, but merely requires such an article when sold or offered for sale in an established receptacle to be branded as to grade and to conform thereto, and the said regulations thereunder do not apply to articles when not packed in such receptacles. *Marshall v. Department of Agric.*, 44 Idaho 440, 258 P. 171 (1927).

State may establish reasonable grades or standards for farm products when sold in receptacles or containers usually and ordinarily employed and require that such products when so packed for sale conform to the grades or standards so established. *Marshall v. Department of Agric.*, 44 Idaho 440, 258 P. 171 (1927).

Limitation On.

Whether the commissioner of agriculture abused his discretion in limiting the number

of standards under which potatoes should be graded and labeled involves a question of fact which the court cannot decide in the absence of evidence. *Marshall v. Department of Agric.*, 44 Idaho 440, 258 P. 171 (1927).

—Scope.

The standards prescribed by the commissioner of agriculture under which potatoes should be graded and labeled for sale must be sufficiently comprehensive to permit the sale of potatoes usually and ordinarily grown in the various producing sections of the state without any unnecessary interference with the unquestioned right to sell such products. *Marshall v. Department of Agric.*, 44 Idaho 440, 258 P. 171 (1927).

RESEARCH REFERENCES

Am. Jur. — 52 Am. Jur. 2d, Markets and Marketing, § 21.

22-705. Appeal from classification. — The owner or person in possession of any farm product classified in accordance with section 22-704 may appeal from such classification to the department, under such rules and regulations as the department may prescribe, which shall issue a certificate of the grade or other classification thereof. [1917, ch. 24, § 10, p. 65; reen. C.L. 79:14; C.S., § 2035; I.C.A., § 22-705.]

22-706. Certificate as prima facie evidence of classification. — A certificate of the grade or other classification of any farm product issued under this chapter shall be accepted in any court of this state as prima facie evidence of the true grade or other classification of such farm product at the time of its classification. [1917, ch. 24, § 1p, p. 65; reen. C.L. 79:15; C.S., § 2036; I.C.A., § 22-706.]

22-707. Penalty for violation. — Any person, firm, corporation or other organization who violates any provision of this chapter or of the rules and regulations made under this chapter for carrying out the provisions of this section, fails or refuses to comply with any requirement of this chapter or who wilfully interferes with the department, its agents or employees in the execution or on account of the execution of its or their duties under this chapter shall be guilty of a misdemeanor. [1917, ch. 24, § 1q, p. 65; compiled and reen. C.L. 79:16; C.S., § 2037; I.C.A., § 22-707.]

STATUTORY NOTES

Cross References. — Penalty for misdemeanor when not otherwise provided, § 18-113.

CHAPTER 8

FRUITS — MARKING AND INSPECTION

SECTION.

22-801. Fruit boxes — How marked — Misuse of labels — Canned or dried fruit excepted.
22-802. Apple grades — Annual publication of regulations.

SECTION.

22-803. Inspection — Certificate of inspection.
22-804. Violation — Penalty.

22-801. Fruit boxes — How marked — Misuse of labels — Canned or dried fruit excepted. — It shall be the duty of every person growing or packing and selling, offering for sale (or) shipping in boxes or packages, any fruit grown in this state, or imported into this state, to plainly mark the same on the outside of the box or package with the name of the variety contained therein or with the words “variety unknown,” the name of the place or locality where grown and the name of the grower, or, in the case of

sale or shipment through an association or organization of growers, the name of such association, and the lot number of the grower, and, in case of apples, pears or peaches, the net weight or the number contained in the package, and it shall be unlawful for any person to mark, or place upon, any package the name of any other place or locality than the place where such fruit was grown except the place to which shipped, or to falsely mark any such package as to variety, name of grower, association or organization or place where grown, or to obliterate or change the original marks on any such package or to remark the same with the name of any other grower or of any other place than that by or in which the contents were grown, or in case such package is marked with the name of an association or organization of growers to remark the same with the name of any other association or organization, and it shall be unlawful for any person, having in his possession for sale, or offering for sale, or selling any fruit grown in this state and shipped in closed packages, to repack the same in the boxes or packages of any other grower or shipper or from any other place, or to sell or offer for sale in closed packages any such fruit except in the original packages, or to pack in or offer for sale, from any marked box or package, any fruit other than that originally contained or shipped therein. In addition to the marks required to be placed upon any closed package of fruit grown in this state, as hereinabove provided, the grower thereof, or association or organization of growers packing the same, shall mark upon the outside of such package the grade of the fruit contained therein, and it shall be unlawful for any person to remark any such closed package as a higher or superior grade than that originally marked by the grower thereof or association or organization packing the same, or for any person other than the grower or association or organization packing such fruit grown in this state to place (on) any such closed package, not marked with the grade of the contents thereof, any mark or brand indicating the grade of such contents. Provided, that nothing in this section shall be construed to apply to canned or dried fruit. [1919, ch. 192, § 1, p. 575; am. 1925, ch. 52, § 1, p. 76; I.C.A., § 22-801; am. 1937, ch. 226, § 1, p. 402.]

STATUTORY NOTES

Cross References. — Cooperative marketing act, § 22-2601 et seq. in parentheses so appeared in the law as amended in 1925.

Compiler's Notes. — The words enclosed

22-802. Apple grades — Annual publication of regulations. — It shall be unlawful for any grower thereof or association or organization of growers packing apples to mark the package with the grade of the contents unless such contents shall comply with the general rules and regulations made, adopted, issued and published from time to time by the director of the department of agriculture, which general rules and regulations shall govern the packing of apples and define and establish the standards for the several grades thereof; which general rules and regulations shall be adopted, issued and published within ninety (90) days after the taking effect of this chapter and the director of the department of agriculture is authorized and directed

in the month of July of each year to make, adopt, issue and publish general rules and regulations governing the packing of apples and establishing and defining the grades thereof for the ensuing year and in adopting the same the director is authorized to consult and advise with fruit growers, the officers of associations or organizations of apple growers, or distributors or dealers in apples. [1919, ch. 192, § 2, p. 275; C.S., § 2039; I.C.A., § 22-802; am. 1957, ch. 85, § 1, p. 135; am. 1974, ch. 18, § 12, p. 364; am. 1976, ch. 70, § 1, p. 238.]

22-803. Inspection — Certificate of inspection. — For enabling the director of the department of agriculture to investigate and certify to shippers and other interested parties the quality and condition of fruits, he shall, upon request of interested parties, inspect or cause to be inspected as to condition and grading by authorized inspectors, by him appointed, any or all fruits prepared or being prepared for shipment and is hereby authorized to issue certificates of inspection to said shippers or other interested parties, certifying as to the condition and grade of such fruits, under such rules and regulations as he may prescribe, including payment, by party requesting such inspection, of such fees as will be reasonable and as nearly as may be to cover the cost for services rendered. In carrying out the provisions of this chapter the director may cooperate with the United States department of agriculture or other inspection agencies. [1919, ch. 192, § 3, p. 575; C.S., § 2040; I.C.A., § 22-803; am. 1974, ch. 18, § 13, p. 364.]

STATUTORY NOTES

Effective Dates. — Section 263 of S.L. 1974, ch. 18 provided that the act should take effect on and after July 1, 1974.

22-804. Violation — Penalty. — Any person who violates any provision of this chapter shall, upon conviction thereof, be adjudged guilty of a misdemeanor and shall be fined not less than twenty-five dollars (\$25.00) nor more than \$200, or shall be imprisoned in the county jail not less than ten (10) days nor more than six (6) months, or shall be punished by both fine and imprisonment. [1919, ch. 192, § 4, p. 575; C.S., § 2041; I.C.A., § 22-804.]

CHAPTER 9

POTATOES — GRADING AND PACKING

SECTION.

- 22-901. Application of act.
- 22-902. Idaho Deluxe.
- 22-903. Idaho Standard.
- 22-904. Idaho Utility.
- 22-905. Application of tolerances.
- 22-906. Bakers.
- 22-907. Containers.

SECTION.

- 22-908. Brands.
- 22-909. Private brands.
- 22-910. Definition of terms.
- 22-911. Retail sales of potatoes.
- 22-912. Penalty for violations.
- 22-913. Remedy by injunction.
- 22-914. Separability.

22-901. Application of act. — When potatoes are marketed or offered for shipment, within the state of Idaho, for packing, repacking or processing purposes, or when potatoes are offered for sale by the grower direct to the consumer in lots of less than one (1) carload within the state or when “Idaho Certified” seed stock, as defined by the Idaho state seed certification officials are offered for sale, the provisions of this act prescribing grades and requiring grading shall not apply; but in all other cases when potatoes are packed for sale, offered for sale, sold, or offered for shipment within or outside the state of Idaho, such potatoes shall be graded either as “Idaho Deluxe,” “Idaho Standard,” or “Idaho Utility”: provided, however, that all potatoes marketed within the state of Idaho or outside the state of Idaho may conform to grades promulgated by an act of congress or promulgated by authority of the secretary of agriculture of the United States, if the shipper or grower so desires. It is further provided that all potatoes not meeting the requirements of grade hereinabove provided for and hereinafter set out are hereby declared to be detrimental to the potato industry of the state of Idaho and shall not be marketed, except as provided in this section. All potatoes conforming to the grades hereinabove and hereinafter set out shall be packed in containers or bags in conformity with the following prescribed rules. When potatoes are to be shipped out of state in bulk, permission shall first be obtained from the Idaho department of agriculture. All permits issued hereunder shall be issued subject to the requirement that the potatoes to be shipped must be graded and must either meet the Idaho grades or the United States department of agriculture grades for potatoes; except that potatoes shipped outside the state for processing into some changed form or product do not need to be graded. The Idaho department of agriculture may promulgate the necessary rules and forms to carry out this paragraph. [1941, ch. 32, § 1, p. 72; am. 1965, ch. 146, § 1, p. 285; am. 1970, ch. 175, § 1, p. 505.]

STATUTORY NOTES

Cross References. — Cooperative marketing act, § 22-2601 et seq.

refer to S.L. 1941, ch. 32, compiled as §§ 22-901 to 22-910 and 22-912 to 22-914.

Compiler's Notes. — The words “this act”

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Constitutionality of Former Law.

The former law governing potato grading, was not invalid under the U.S. Constitution' as regulating interstate commerce, as abridging the right of contract, as depriving persons

of property without due process of law, or as discriminating against certain persons. *Detweiler v. Welch*, 46 F.2d 71 (D. Idaho), aff'd, 46 F.2d 75 (9th Cir. 1930).

22-902. Idaho Deluxe. — Idaho Deluxe potatoes shall consist of potatoes of one (1) variety or similar varietal characteristics, the minimum size of which shall be either two (2) inches in diameter or four (4) ounces in weight, except as hereinafter provided for, and not less than forty percent (40%) of the potatoes in the lot shall be six (6) ounces or larger, and which

are fairly well shaped, free from freezing injury, blackheart, and soft rot or wet breakdown and from damage caused by dirt or other foreign matter, sunburn, second growth, growth cracks, air cracks, internal disorders, cuts, shriveling, sprouting, scab, blight, dry rot, rhizoctonia, other disease, insects or mechanical or other means, except that this grade may contain not more than fifteen percent (15%) by weight of potatoes meeting the requirements of Idaho Standard Grade as hereinafter provided for, providing that none of this fifteen percent (15%) of potatoes by weight shall be smaller in size by weight than ten (10) ounces.

In order to allow for variations other than size, incident to proper grading and handling, not more than six percent (6%) of the potatoes in any container may be below the requirements of the grade, but not to exceed one sixth ($\frac{1}{6}$) of this amount or one percent (1%) may be allowed for potatoes affected by soft rot or wet breakdown. In addition, not more than five percent (5%) by weight may be damaged by internal disorders, and in addition, not more than three percent (3%) may be below the prescribed size, provided, however, that when potatoes of this grade are packed to meet a minimum size requirement of six (6) ounces or more by weight, the tolerance for undersize shall be five percent (5%), but not more than two percent (2%) may be smaller than two (2) inches in diameter or four (4) ounces in weight. [1941, ch. 32, § 2, p. 72; am. 1970, ch. 175, § 2, p. 505.]

22-903. Idaho Standard. — Idaho Standard potatoes shall consist of potatoes of one (1) variety or similar varietal characteristics, the minimum size of which shall be two (2) inches in diameter, or four (4) ounces in weight, except as hereinafter provided for, and not less than forty percent (40%) of the potatoes in the lot shall be six (6) ounces or larger, and which are free from freezing, injury, blackheart, soft rot or wet breakdown and from serious damage caused by dirt or other foreign matter, sunburn, second growth, growth cracks, air cracks, internal disorders, cuts (potatoes with clipped ends permissible only in tolerance hereinafter provided for), shriveling, scab, blight, dry rot, other disease, insects or mechanical or other means.

In order to allow for variations other than size, incident to proper grading and handling, not more than six percent (6%) of the potatoes in any container may be below the requirements of the grade, but not to exceed one sixth ($\frac{1}{6}$) of this amount or one percent (1%) shall be allowed for potatoes affected by soft rot or wet breakdown. In addition, not more than five percent (5%) may be seriously damaged by internal disorders, and not more than three percent (3%) may be below the prescribed size provided, however, that when potatoes of this grade are packed to meet a minimum size requirement of six (6) ounces or more by weight, the tolerance for undersize shall be five percent (5%), but not more than two percent (2%) may be smaller than two (2) inches in diameter, or four (4) ounces in weight. [1941, ch. 32, § 3, p. 72; am. 1970, ch. 175, § 3, p. 505.]

22-904. Idaho Utility. — Idaho Utility potatoes shall consist of potatoes of one (1) variety or similar varietal characteristics and shall be not less than one and one-half ($1\frac{1}{2}$) inches in diameter and which are free from

freezing injury, blackheart, and soft rot or wet breakdown, and from serious damage caused by dirt or other foreign matter, sunburn, second growth, growth cracks, air cracks, internal disorders, cuts, shriveling, scab, blight, dry rot, other disease, insects or mechanical or other means.

In order to allow for variations other than size incident to proper grading and handling, not more than six percent (6%) of the potatoes in any container may be below the requirement of the grade, but not to exceed one sixth ($1/6$) of this amount, or one percent (1%), shall be allowed for potatoes affected by soft rot or wet breakdown. In addition, not more than three percent (3%) may be below the prescribed minimum size and not more than five percent (5%) in addition may be seriously damaged by internal disorders. [1941, ch. 32, § 4, p. 72; am. 1970, ch. 175, § 4, p. 505.]

22-905. Application of tolerances. — All percentages shall be calculated on the basis of weight.

The tolerances for the standards are on a container basis. However, if the averages for the entire lot, based on sample inspection, are within the tolerances specified in the standards, the contents of individual packages in the lot may vary from the specified tolerances subject to the following limitations.

In packages containing over 15 specimens, when the tolerance specified is 10 percent or more, not over one tenth ($1/10$) of the individual packages in the lot may contain more than one and one-half ($1\frac{1}{2}$) times the tolerance, but no package may contain more than four (4) times the tolerance for soft rot or wet breakdown.

When the tolerance specified is less than 10 percent, not over one tenth ($1/10$) of the individual packages in any lot may contain more than double the tolerance specified, but no package may contain more than four (4) times the tolerance for soft rot or wet breakdown.

In packages containing 15 specimens, or less, not over one tenth ($1/10$) of the individual packages in any lot may contain more than double any tolerance specified, except that at least one (1) defective specimen shall be permitted in a package. [1941, ch. 32, § 5, p. 72.]

22-906. Bakers. — When potatoes, sized six (6) ounces or larger, are packed in containers branded in accordance with the grade to which they conform, they may, in addition, carry a tag or brand bearing the designation "Idaho Bakers." [1941, ch. 32, § 6, p. 72.]

22-907. Containers. — The term "containers" means cloth, plastic, paper, or fiber sacks (such as are customarily used in the shipment of potatoes), cartons, barrels, boxes, crates, hampers, or baskets. Cloth or fiber sacks in which potatoes not exempt under the provisions of this act are packed for shipment, shall be new or recleaned, bright, undamaged sacks. Provided, however, that on and after September 1, 1949, no container known as a mugged bag can be used on any grade or grades of potatoes as defined in this act. The term "mugged bag" means any bag, after such bag has been filled and the top thereof closed or secured, which is not fully closed at the

top and which leaves the mouth thereof partially open so that the lips of the bag are not drawn closely together.

The term “undamaged” means that sacks have unbroken hems and may have not more than two (2) holes of not more than one (1) inch in diameter. [1941, ch. 32, § 7, p. 72; am. 1949, ch. 108, § 1, p. 197; am. 1965, ch. 146, § 2, p. 285.]

STATUTORY NOTES

Compiler’s Notes. — For words “this act”, see Compiler’s Notes, § 22-901.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates. — Section 3 of S.L. 1965, ch. 146 provided that the act shall be in full force and effect on and after July 1, 1965.

22-908. Brands. — When potatoes are packed in containers, such containers shall be branded, marked, labeled, or stenciled in a plain and legible manner with the name of the grade as hereinbefore provided for and to which such potatoes conform. When the containers contain one hundred (100) pounds or more, such brands, marks, labels, or stencils shall be in two (2) inch or larger block type letters, but when the containers contain less than one hundred (100) pounds, the brands, marks, labels, or stencils may be in proportion to the size of the container.

The brands, marks, labels, or stencils shall be branded in a color or colors to contrast with the color of the container, and shall be on the same side of the bag or container as the private brand or other printing on the container, and shall be in such position as to be readily legible with the other printed matter or design on the container. On one hundred (100) pound bags, the grade designation shall not be nearer than six (6) inches to the top or bottom of the bag; on bags containing less than one hundred (100) pounds, the grade designation shall be placed in position in proportion relatively to the one hundred (100) pound bag. [1941, ch. 32, § 8, p. 72.]

22-909. Private brands. — Private brands may be used when such brands include the official grade title and are registered, approved and recorded by the state department of agriculture. [1941, ch. 32, § 9, p. 72.]

22-910. Definition of terms. — As used in these standards:

1. “Soft rot or wet breakdown” means any soft, mushy, or leaky condition of the tissue such as slimy soft rot, leak, or wet breakdown following freezing or sunscald.

2. “Diameter” means the greatest dimension at right angles to the longitudinal axis. The long axis shall be used without regard to the position of the stem (rhizome).

3. “Fairly well shaped” means that the appearance of the individual potato or the general appearance of the potatoes in the container is not materially injured by pointed, dumbbell-shaped or otherwise ill-formed potatoes.

4. “Free from damage” means free from any injury or defect which materially injures the appearance of the individual potato or the general

appearance of the potatoes in the container, or which cannot be removed without a loss of more than five percent (5%) of the total weight of the potato including peel covering defective area. Loss of outer skin (epidermis) shall not be considered as damage unless the skinned surface is materially affected by very dark discoloration. Any one (1) of the following defects or any combination of defects the seriousness of which exceeds the maximum allowed for any one (1) defect shall be considered as damage:

- (a) Second growth or growth cracks which have developed to such an extent as to materially injure the appearance of the individual potato or the general appearance of the potatoes in the container.
- (b) Air cracks which are deep, or shallow air cracks which materially injure the appearance of the individual potato or the general appearance of the potatoes in the container.
- (c) Shriveling, when the potato is more than moderately shriveled, spongy, or flabby.
- (d) Sprouting when more than ten percent (10%) of the potatoes have sprouts over three-fourths ($\frac{3}{4}$) of an inch long.
- (e) Surface scab which covers an area of more than five percent (5%) of the surface of the potato in the aggregate.
- (f) Pitted scab which affects the appearance of the potato to a greater extent than the amount of surface scab permitted or causes a loss of more than five percent (5%) of the total weight of the potato including peel covering defective area.
- (g) Rhizoctonia when the general appearance of the potatoes in the container is materially injured or when individual potatoes are badly infected.
- (h) Dirt when the general appearance of the potatoes in the container is more than slightly dirty or stained, or when individual potatoes are badly caked with dirt or badly stained; or other foreign matter which materially affects the appearance of the potatoes.

5. "Free from serious damage" means free from any injury or defect which seriously injures the appearance of the individual potato or the general appearance of the potatoes in the container, or which cannot be removed without a loss of more than ten percent (10%) of the total weight of the potato including peel covering defective area. Any one (1) of the following defects or any combination of defects the seriousness of which exceeds the maximum allowed for any one (1) defect shall be considered as serious damage:

- (a) Dirt when the general appearance of the potatoes in the container is seriously affected by tubers badly caked with dirt; or other foreign matter which seriously affects the appearance of the potatoes.
- (b) Cuts when both ends are clipped or when more than an estimated one-third ($\frac{1}{3}$) of the potato is cut away from one (1) end or when the remaining portion of the clipped potato weighs less than four (4) ounces. Other cuts which seriously affect the appearance of the individual potato or which cannot be removed without a loss of more than ten percent (10%) of the total weight of the potato including peel covering defective area.
- (c) Shriveling when the potato is excessively shriveled, spongy, or flabby.

(d) Surface scab which covers an area of more than fifty percent (50%) of the surface of the potato in the aggregate.

(e) Pitted scab which affects the appearance of the potato to a greater extent than the amount of surface scab permitted or causes a loss of more than ten percent (10%) of the total weight of the potato including peel covering defective area.

6. "Sampling" means the procedure used to take a representative sample from a lot:

(a) Random sampling: The process of selecting a sample from a lot whereby each unit in the lot has an equal chance of being chosen.

(b) Sample portion: A randomly selected portion of the potatoes taken from the lot which when composited with other portions will represent the quality of the lot.

7. "Recognized types of sampling procedures" mean:

(a) Official sampling: The sampler is a trained and licensed employee of the federal/state inspection service. The federal/state inspection service or the Idaho department of agriculture assumes full responsibility for employees in this position, ensuring that proper sampling methods and procedures, sample identity and security are maintained.

(b) Supervised sampling: The sampler is not an employee of the federal/state inspection service nor the Idaho department of agriculture. Sampling methods and procedures, sample identity and security are randomly checked and supervised by the federal/state inspection service. Before a sampler can be employed as a supervised sampler, the sampler shall be trained and approved by the federal/state inspection service.

Federal/state inspection service registers shall contain the names of trained and approved samplers used for this type of sampling. Worksheets and certificates or computer printouts from this type of sampling shall show supervised sampling.

8. "Submitted samples" mean samples that are drawn, marked and controlled by the applicant requesting inspection and submitted to the inspection service for grading results. Work sheets and certificates or computer printouts from this type of sampling shall show "submitted sample."

9. Any handler of potatoes requesting grade or quality inspections from the federal/state inspection service using sampling methods other than official sampling shall notify all financially interested parties.

10. Any processor, packer or shipper of potatoes who uses other than the official sampling as defined in this chapter, shall notify the grower of this fact. The penalties for any deviation in sampling procedures or for tampering with a sample or altering a certificate are provided in section 22-912, Idaho Code. [1941, ch. 32, § 10, p. 72; am. 1990, ch. 190, § 1, p. 419.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

22-911. Retail sales of potatoes. — (a) It shall be unlawful within the state of Idaho to offer for sale or sell to any retail dealer for the purpose of resale to the consumer, or to offer for sale or sell to the consumer in any retail store or market in this state, any potato which has not been graded or which does not meet the grading standards of chapter 9, title 22, Idaho Code.

(b) All potatoes sold to the consumer by retail stores or markets in this state shall be graded and marked in accordance with the standards set forth in this chapter. Provided, however, that nothing in this act shall be construed as to prohibit the sale of bulk potatoes to the consumer in retail stores or markets if such potatoes are clearly identified to the consumer as to grade and state of origin.

(c) The director of the department of agriculture may cause to be made, by qualified inspectors appointed for that purpose, inspections of all potatoes offered for sale in all retail stores or markets, and at all wholesale distributors or potato dealers selling or offering potatoes for sale to retail outlets. Such inspections shall be for the purpose of ensuring that potatoes offered for sale are properly identified as to grade and are within the standards set forth in chapter 9, title 22, Idaho Code. Such inspectors shall order the removal or regrading and remarking of any potatoes which are misbranded or mismarked or which no longer meet the required standards of grade.

(d) The director shall adopt rules and regulations necessary to enforce the provisions of this section, and may regulate the handling, transportation, storage and display of all potatoes offered for sale to the consumers in this state so as to enhance the quality thereof. [I.C., § 22-911, as added by 1972, ch. 233, § 1, p. 614; am. 1974, ch. 18, § 14, p. 364.]

STATUTORY NOTES

Prior Laws. — Former § 22-911, which comprised S.L. 1941, ch. 32, § 11, p. 72, was repealed by S.L. 1970, ch. 175, § 5.

Compiler's Notes. — The words "this act" refer to S.L. 1972, ch. 233, which is compiled as this section.

22-912. Penalty for violations. — Any person violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$500 or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment. [1941, ch. 32, § 12, p. 72.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-901.

22-913. Remedy by injunction. — In addition to the remedy prescribed in the foregoing section for the violation of the provisions of this act, any person, firm or corporation violating, or threatening to violate, any of the provisions of this act may be enjoined from violating the same; such injunction proceedings may be instituted by the director of the department

of agriculture as plaintiff, and the attorney general or prosecuting attorney of the county where the violation or threatened violation of this act has occurred, on demand of the director, shall represent the director in such proceedings. In any such proceedings no bond shall be required of the plaintiff. [1941, ch. 32, § 13, p. 72; am. 1974, ch. 18, § 15, p. 364.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-901.

1974, ch. 18 provided that the act should take effect on and after July 1, 1974.

Effective Dates. — Section 263 of S.L.

22-914. Separability. — If any part of this act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act. The legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts thereof would be declared unconstitutional. [1941, ch. 32, § 15, p. 72.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-901.

CHAPTER 10

CROP MANAGEMENT AREAS

SECTION.

22-1001 — 22-1006. [Repealed.]

22-1001 — 22-1006. [Repealed.]

STATUTORY NOTES

Prior Laws. — Former § 22-1001 which comprised 1937, ch. 80, §§ 1-3, p. 105, was repealed by S.L. 1974, ch. 18, § 1, p. 364.

Former § 22-1002 which comprised 1937, ch. 80, §§ 1-3, p. 105, was repealed by S.L. 1974, ch. 18, § 1, p. 364.

Former § 22-1003 which comprised 1937, ch. 80, §§ 1-3, p. 105, was repealed by S.L. 1974, ch. 18, § 1, p. 364.

Compiler's Notes. — The following sections were repealed by S.L. 2002, ch. 89, § 1, effective July 1, 2002:

22-1001. Purpose. [I.C., § 22-1001, as added by 1998, ch. 176, § 1, p. 307.]

22-1002. Definitions. [I.C., § 22-1002, as added by 1988, ch. 176, § 1, p. 307.]

22-1003. Designation of a crop management area. [I.C., § 22-1003, as added by 1988, ch. 176, § 1, p. 307.]

22-1004. Inspection. [I.C., § 22-1004, as added by 1988, ch. 176, § 1, p. 307.]

22-1005. Disposition at owner's expense — Fee schedule authorized. [I.C., § 22-1005, as added by 1988, ch. 176, § 1, p. 307.]

22-1006. Violations — Penalties. [I.C., § 22-1006, as added by 1988, ch. 176, § 1, p. 307.]

CHAPTER 11

ORGANIC FOOD PRODUCTS

SECTION.

22-1101. Legislative intent.

22-1102. Definitions.

22-1103. Administration and enforcement —

SECTION.

Rules — Annual list distribution.

22-1104. Violation of rules — Civil penalty.

SECTION.

22-1105. Prohibited representations.

22-1106. Fees — Organic food products administration account.

SECTION.

22-1107. Organic food advisory council.

22-1108. Appeal process.

22-1109 — 22-1117. [Repealed.]

22-1101. Legislative intent. — The legislature recognizes a public benefit and provides consumer protection in establishing standards for food products marketed and labeled using the term “organic”, or a derivative of the term “organic.” These standards will also facilitate the development of out-of-state markets for Idaho food grown by organic methods. [I.C., § 22-1101, as added by 1990, ch. 145, § 1, p. 325.]

STATUTORY NOTES

Prior Laws. — Former Chapter 11 of Title 22, which comprised 1937, ch. 252, §§ 1-10, 12-16, 18, 19, p. 470, was repealed by S.L. 1974, ch. 18, § 1, p. 364.

Compiler's Notes. — Chapters 145, 413 and 426, S.L. 1990, each purported to create a new chapter 11 of title 22. Chapter 145 was compiled as title 22, chapter 11 (§§ 22-1101

— 22-1107); chapter 413 was compiled as title 22, chapter [15] 11 (§§ [22-1501] 22-1101 — [22-1511] 22-1111, which renumbering was made permanent by S.L. 2005, chapter 25); chapter 426 was compiled as title 22, chapter [22] 11 (§§ [22-2201] 22-1101 — [22-2212] 22-1112) and was subsequently repealed by S.L. 2001, chapter 250.

22-1102. Definitions. — In this chapter:

(1) “Director” means the director of the department of agriculture or the director’s designee.

(2) “Food products” shall include all agricultural, horticultural, viticultural and vegetable products of the soil, apiary and apiary products, poultry and poultry products, livestock and livestock products, milk and dairy products and aquaculture products.

(3) “Handler” means any person engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production, except such term shall not include final retailers of agricultural products that do not process agricultural products.

(4) “Livestock” means any cattle, sheep, goat, swine, poultry, or equine animals used for food or in the production of food, fiber, feed, or other agricultural-based consumer products; wild or domesticated game; or other nonplant life, except such term shall not include aquatic animals or bees for the production of food, fiber, feed, or other agricultural-based consumer products.

(5) “Organic certification seal” means the design approved by the director and which when imprinted or affixed on labels, packages or products, or used in advertising in any manner, shall signify that the standards and rules developed in accordance with the provisions of this chapter and all other conditions of the provisions of this chapter have been met.

(6) “Organic food product” means any food product that is marketed using the term organic, or any derivative of the term organic in its labeling or advertising. Organic foods are those processed, packaged, transported and stored to retain maximum nutritional value, without the use of artificial preservatives, coloring or other additives, irradiation, or synthetic pesticides.

(7) "Organically grown food products" means food products which are produced without the use of synthetically compounded fertilizers, pesticides, or growth regulators for a period not less than thirty-six (36) months prior to harvest. Organically grown food products are produced under the standards and rules established in accordance with the provisions of this chapter and by other qualified agencies.

(8) "Person" means an individual, partnership, corporation, association, cooperative, or other entity.

(9) "Producer" means a person who engages in the business of growing or producing food, fiber, feed, and other agricultural-based consumer products.

(10) "Vendor" means any person who sells organic food products to the consumer or another vendor. [I.C., § 22-1102, as added by 1990, ch. 145, § 1, p. 325; am. 1994, ch. 99, § 2, p. 224; am. 1999, ch. 136, § 1, p. 383; am. 2001, ch. 75, § 2, p. 181; am. 2007, ch. 53, § 1, p. 124.]

STATUTORY NOTES

Prior Laws. — Former § 22-1102 was repealed. See Prior Laws, § 22-1101.

Amendments. — The 2007 amendment, by ch. 53, rewrote subsection (3), which formerly read: "Handler" means any person or organization who processes, packages, resells, transports or stores organic food products or nonorganic food products"; rewrote subsection (4), which formerly read: "Livestock" means cattle, swine, sheep, goats, ratites, domestic cervidae and bison"; rewrote subsection (8), which formerly read: "Person means any individual, partnership, association, or any

organized group of persons whether incorporated or not"; and rewrote subsection (9), which formerly read: "Producer" means any person or organization who: (a) Grows, raises or produces a food product; and (b) Sells the food product as, or offers it for sale as, an organic food."

Compiler's Notes. — S.L. 1992, ch. 314, which was to amend this section upon certification of the Department of Agriculture that national organic livestock regulations had been adopted, was repealed by § 1 of S.L. 2001, ch. 314.

22-1103. Administration and enforcement — Rules — Annual list distribution. — (1) The administration and enforcement of the provisions of this chapter shall be under the director. The director is authorized, in conformance with chapter 52, title 67, Idaho Code, to promulgate rules concerning, but not limited to:

- (a) Standards for agricultural crops and livestock produced for sale as organically grown food products.
- (b) Records required of organically grown food products producers.
- (c) The number of on-site inspections, announced and unannounced.
- (d) Chemical residue analysis of organically grown food products and fees for conducting such analysis.
- (e) Certification of private laboratories to conduct chemical residue analyses.
- (f) Standards that a producer must meet to be recognized as a producer under the provisions of this chapter.
- (g) Development and distribution of the organic certification seal and standards for its application for use on Idaho organically grown food products.
- (h) Development and implementation of labeling standards.
- (i) Rules establishing organic standards for poultry and poultry products, livestock and livestock products, milk and dairy products or aquaculture

products, which will be promulgated in consultation with the appropriate agricultural or commodity organizations as determined by the director. No pending or temporary rule adopted by the department shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review pursuant to sections 67-5224 and 67-5291, Idaho Code.

(j) Education. The director may not issue a certificate under the provisions of this chapter unless the applicant has met the requirements imposed by the director to ensure the applicant has the knowledge necessary to comply with the requirements of this chapter.

(k) Standards for health care and medical treatment for livestock qualifying as organically grown food products and for the prevention and control of infections or communicable diseases among such livestock.

(l) Standards for prohibitions against denial of health care for or medical treatment of livestock in order to obtain or retain organic certification.

(2) An annual list of all certified organic producers, handlers and vendors shall be distributed to state regulatory authorities, and to other persons upon request. [I.C., § 22-1103, as added by 1990, ch. 145, § 1, p. 325; am. 1999, ch. 136, § 3, p. 383; am. 2000, ch. 190, § 1, p. 470; am. 2001, ch. 75, § 3, p. 181.]

STATUTORY NOTES

Prior Laws. — Former § 22-1103 was repealed. See Prior Laws, § 22-1101.

Compiler's Notes. — S.L. 1992, ch. 314, which was to amend this section upon certifi-

cation of the Department of Agriculture that national organic livestock regulations had been adopted, was repealed by § 1 of S.L. 2001, ch. 314.

22-1104. Violation of rules — Civil penalty. — Any person violating a rule promulgated by the director to implement provisions of this chapter may be assessed a civil penalty by the department or its duly authorized agent of not more than ten thousand dollars (\$10,000) for each offense and shall be liable for reasonable attorney's fees. Assessment of a civil penalty may be made in conjunction with any other department administrative action. No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act, chapter 52, title 67, Idaho Code. If the department is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court. Any person against whom the department has assessed a civil penalty under this section may, within twenty-eight (28) days of the final agency action making the assessment, seek judicial review of the assessment in accordance with the provisions of chapter 52, title 67, Idaho Code.

Moneys collected for violation of a rule or regulation shall be deposited in the state treasury and credited to the organic food products administration account of the department. [I.C., § 22-1104, as added by 1990, ch. 145, § 1, p. 325; am. 1993, ch. 216, § 2, p. 587; am. 2002, ch. 88, § 1, p. 209.]

STATUTORY NOTES

Cross References. — Organic food products administration account, § 22-1106.

Prior Laws. — Former § 22-1104 was repealed. See Prior Laws, § 22-1101.

22-1105. Prohibited representations. — A producer, vendor or handler shall not sell or resell or offer for sale or resale any food product with the representation that the product is an organically grown food product if the producer, vendor or handler knows, or has reason to know, that the food product has not been grown, raised or produced as an organically grown food product as defined in this chapter. Violations of this section shall be punishable as provided in section 22-1104, Idaho Code. [I.C., § 22-1105, as added by 1990, ch. 145, § 1, p. 325; am. 2001, ch. 75, § 4, p. 181.]

STATUTORY NOTES

Prior Laws. — Former § 22-1105 was repealed. See Prior Laws, § 22-1101.

22-1106. Fees — Organic food products administration account. — The director may adopt rules establishing a fee schedule that will provide for the recovery of the full cost of the certification program. Fees collected pursuant to this section shall be deposited in the organic food products administration account which is hereby created in the dedicated fund of the state treasury. Moneys in the account shall be used solely for carrying out the provisions of this chapter and may be expended only pursuant to appropriation. The director may employ as many personnel as are necessary to carry out the provisions of this chapter. [I.C., § 22-1106, as added by 1990, ch. 145, § 1, p. 325; am. 2001, ch. 75, § 5, p. 181.]

STATUTORY NOTES

Prior Laws. — Former § 22-1106 was repealed. See Prior Laws, § 22-1101.

22-1107. Organic food advisory council. — (1) There is hereby created in the department of agriculture, the organic food advisory council which shall consist of seven (7) members who shall be appointed by the director. Organizations representing Idaho's organic food products industry shall nominate to the director one (1) member and one (1) alternate for each vacancy on the advisory council to represent the following categories of organic food products:

- (a) Cereals, grains and legumes;
- (b) Dairy and livestock;
- (c) Forage and feed;
- (d) Herbs; and
- (e) Vegetables and row crops.

At least one (1) member shall be a purchaser, vendor or consumer of organic food products, and one (1) member shall represent conventional agriculture. Three (3) members of the council shall be originally appointed for a term of two (2) years and four (4) members of the council shall be appointed for a

term of three (3) years. Thereafter all terms shall be for a period of three (3) years. If a vacancy occurs, the director may appoint a replacement for the remainder of the term.

(2) The organic food advisory council shall advise the director on matters relating to administration of the provisions of this chapter. A majority of the members of the council shall represent a quorum. The council shall meet at the call of the chairman or the director.

(3) Members of the council shall be compensated as provided in section 59-509(b), Idaho Code. [I.C., § 22-1107, as added by 1990, ch. 145, § 1, p. 325; am. 2001, ch. 75, § 6, p. 181; am. 2002, ch. 88, § 2, p. 209.]

STATUTORY NOTES

Prior Laws. — Former § 22-1107 was repealed. See Prior Laws, § 22-1101.

22-1108. Appeal process. — Any person aggrieved by an agency action in the administration and enforcement of this chapter or rules promulgated pursuant thereto may, within sixty (60) days after the action is taken, petition the director for a hearing to determine the matter as provided for in relation to contested cases pursuant to chapter 52, title 67, Idaho Code. [I.C., § 22-1108, as added by 1994, ch. 99, § 1, p. 224.]

STATUTORY NOTES

Prior Laws. — Former § 22-1108 was repealed. See Prior Laws, § 22-1101.

22-1109 — 22-1117. Penalty for tax defaults — Powers and duties of commission — Advertising — Payment of taxes — Penalties — Construction — Separability. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, 12-16, 18 and 19, p. 470, were repealed by S.L. which comprised 1937, ch. 252, §§ 9, 10, 1974, ch. 18, § 1, p. 364.

CHAPTER 12

POTATO COMMISSION

SECTION.

- 22-1201. Legislative intent.
- 22-1202. Potato commission created.
- 22-1203. Executive office.
- 22-1204. Definitions.
- 22-1205. Administration and enforcement of act.
- 22-1206. Penalty for tax defaults.
- 22-1207. Powers and duties of commission.
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- 22-1209. Deposit and disbursement of funds.

SECTION.

- 22-1210. Limit on state liability — Compensation and expenses.
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- 22-1213. Penalty for violations.
- 22-1214. Liberal construction — Separability.
- 22-1215. Access to records.

22-1201. Legislative intent. — It is in the best interest of all the people of the state of Idaho that the abundant natural resources of Idaho be protected, fully developed, and uniformly distributed. The potato industry is one of the agricultural industries that contributes to the economic welfare of the state. It is the purpose of this chapter to promote the public health and welfare of the citizens of the state by providing means for the protection, promotion, study, research, analysis and development of markets relating to the growing and promotion of Idaho potato products and byproducts. [I.C., § 22-1201, as added by 2004, ch. 188, § 2, p. 582.]

STATUTORY NOTES

Prior Laws. — Former § 22-1201, which comprised 1939, ch. 172, § 1, p. 312; am. 1969, ch. 213, § 1, p. 614, was repealed by S.L. 2004, ch. 188, § 1.

Effective Dates. — Section 7 of S.L. 2004, ch. 188 declared an emergency. Approved March 23, 2004.

22-1202. Potato commission created. — There is hereby created and established in the department of self-governing agencies the “Idaho potato commission” to be composed of nine (9) practical potato persons, resident citizens of the state of Idaho for a period of three (3) years prior to their appointment each of whom has had active experience in growing, or shipping, or processing of potatoes produced in the state of Idaho. At least five (5) members of said commission shall be growers who are actually now engaged in the production of potatoes. Two (2) of the members shall be shippers who are actually now engaged in the shipping of potatoes, and two (2) of the members shall be processors who are actually now engaged in the processing of potatoes. The qualifications for members of said commission as above required shall continue throughout their respective terms of office. Three (3) growers shall be nominated for each grower vacancy that occurs, from which the governor shall appoint one (1). Two (2) grower commissioners shall be appointed from the district known as District No. 1, consisting of the counties of Oneida, Franklin, Bear Lake, Caribou, Bannock, Power, Bingham, Bonneville, Teton, Madison, Jefferson, Fremont, Clark, Butte, Custer, and Lemhi; one (1) grower commissioner shall be appointed from the district known as District No. 2A, consisting of the counties of Twin Falls, Jerome, Lincoln, Camas, Elmore, Boise, Valley, and Gooding; one (1) grower commissioner shall be appointed from the district known as District No. 2B, consisting of the counties of Cassia, Minidoka, Blaine, Custer and Lemhi; and one (1) grower commissioner shall be appointed from the district known as District No. 3, consisting of the counties of Owyhee, Ada, Canyon, Gem, Payette, Washington, Adams, Idaho, Lewis, Nez Perce, Clearwater, Latah, Benewah, Shoshone, Kootenai, Bonner, and Boundary. Three (3) shippers shall be nominated for each shipper vacancy that occurs from which the governor shall appoint one (1). Shipper commissioners do not necessarily need to be nominated from geographical areas. Three (3) processors shall be nominated for each processor vacancy that occurs from which the governor shall appoint one (1). Processor commissioners do not necessarily need to be nominated from geographical areas. Nominations must be made thirty (30) days prior to appointment. All nominations must give equal consideration to all who are eligible for appointment as defined in this act. The

Idaho potato commission shall hold separate meetings of the growers, shippers, or processors, as the nominations to be made shall require, in the various districts, to determine who shall be nominated for appointment. Notice of said meetings shall be given by publication in one (1) newspaper published in each county of the district or districts in which said nominations are to be made, and the notice shall be published in two (2) issues of each newspaper, the first to be approximately thirty (30) days and the second approximately ten (10) days before said meeting. The notice shall state the purpose, time and place of said meeting. All meetings held for the selection of nominees shall be held prior to March 31 of the year the appointment or appointments are to be made.

The term of office shall be three (3) years and no commissioner shall serve more than two (2) consecutive terms. The commissioners shall elect a chairman for a term of one (1) year.

Vacancies shall be filled as terms expire. Each of such commissioners shall hold office until his successor has been appointed and qualified. The term of office shall commence on September 15 of the year of appointment and expire on September 14 of the last year of the term of office.

A majority of the members of said commission shall constitute a quorum for the transaction of all business and the carrying out of the duties of said commission. Before entering on the discharge of their duties as members of said commission, each member shall take and subscribe to the oath of office prescribed for state officers.

Each member of the commission shall be compensated as provided by section 59-509(j), Idaho Code, provided however, that compensation paid to members of the commission from and after April 1, 1992, shall not be considered salary as defined in section 59-1302(31), Idaho Code. [1939, ch. 172, § 2, p. 312; am. 1957, ch. 274, § 1, p. 632; am. 1961, ch. 316, § 1, p. 603; am. 1969, ch. 213, § 2, p. 614; am. 1974, ch. 13, § 3, p. 138; am. 1974, ch. 115, § 1, p. 1283; am. 1980, ch. 247, § 8, p. 582; am. 1985, ch. 109, § 1, p. 212; am. 1997, ch. 320, § 1, p. 944.]

STATUTORY NOTES

Cross References. — Department of self-governing agencies, § 67-2601 et seq.

Oath of office, § 59-401 et seq.

Compiler's Notes. — The words "this act," used near the end of the first paragraph, refer to S.L. 1939, ch. 172, presently compiled as §§ 22-1202 to 22-1208, 22-1211, and 22-1212 to 22-1214.

Effective Dates. — Section 194 of S.L. 1974, ch. 13 provided the act should take effect on and after July 1, 1974.

Section 2 of S.L. 1974, ch. 115 provided that this act should be in full force and effect on and after July 2, 1974.

Section 3 of S.L. 1997, ch. 320 declared an emergency. Approved March 24, 1997.

JUDICIAL DECISIONS

Suit for Trademark Infringement.

Although the power to sue and be sued has not been conferred upon the commission, the commission is an independent self-governing state agency which is financed through its own taxing power and which has the traditionally nongovernmental function of carry-

ing out advertising and promotion; so, therefore, the commission was the real party in interest in a suit for infringement of the trademark "Idaho." *Idaho Potato Comm'n v. Washington Potato Comm'n*, 410 F. Supp. 171 (D. Idaho 1975).

22-1203. Executive office. — The executive office of said commission is hereby established in Ada county. [1939, ch. 172, § 3, p. 312; am. 2001, ch. 183, § 1, p. 613.]

22-1204. Definitions. — As used in this act:

1. The term “commission” means the Idaho potato commission.
2. The term “person” means individual, partnership, corporation, association, grower and/or any other business unit.
3. The term “potatoes” means and includes only potatoes sold or intended for human consumption and grown in the state of Idaho.
4. “Shipment” of potatoes shall be deemed to take place when the potatoes are loaded within the state of Idaho, in a car, bulk, truck or other conveyance in which the potatoes are to be transported for sale or otherwise.
5. The term “dealer” means and includes any person engaged in the business of buying, receiving, processing, or selling potatoes for profit or remuneration.
6. The term “shipper” means and includes one who is properly licensed under federal and state laws and actively engaged in the packing and shipping of potatoes in the primary channel of trade in interstate commerce, and who ships more than he produces.
7. The term “grower” means one who is actively engaged in the production of farm products, primarily potatoes, and who is not engaged in the shipping or processing of potatoes.
8. Potatoes shall be deemed to be delivered into the primary channel of trade when any such potatoes are sold or delivered for shipment, or delivered for canning and/or processing into by-products.
9. The term “hundredweight” means each one hundred (100) pound unit or combination of packages making a hundred (100) pound unit of any shipment of potatoes based on invoice and/or bill of lading records.
10. The term “processor” means a person who is actively engaged in the processing of potatoes for human consumption.
11. The term “processing” means changing the form of potatoes from the raw or natural state into a product for human consumption.
12. The term “handler” means and includes any person processing potatoes or handling them in the primary channel of trade.
13. The term “tax” means an assessment levied on potatoes covered by this act for the sole purpose of financing, on behalf of the potato industry in Idaho, the commission’s activities in carrying out the purposes of this act. [1939, ch. 172, § 4, p. 312; am. 1957, ch. 274, § 2, p. 632; am. 1961, ch. 316, § 2, p. 603; am. 1969, ch. 213, § 3, p. 614; am. 1973, ch. 121, § 1, p. 229.]

STATUTORY NOTES

Compiler’s Notes. — For words “this act”, see Compiler’s Notes, § 22-1202.

Effective Dates. — Section 3 of S.L. 1961, ch. 316 declared an emergency. Approved March 14, 1961.

Section 5 of S.L. 1973, ch. 121 declared an emergency. Approved March 8, 1973.

22-1205. Administration and enforcement of act. — The administration of this act shall be vested in the Idaho potato commission which shall have power to prescribe and enforce suitable and reasonable rules for the enforcement of the provisions thereof, and shall administer the taxes levied and imposed by this act. Said commission shall have power to cause its duly authorized agent or representative to enter upon the premises of any grower, dealer and/or handler of potatoes, and to examine or cause to be examined by any such agent or representative any of the following items: any books, papers, records, ledgers, purchase journals, sales journals, electronically and/or magnetically recorded data, computers and computer records or memoranda bearing on the amount of taxes payable or the correct usage of any Idaho trade or certification mark, and to secure all other information directly or indirectly concerned in the enforcement of this act. [1939, ch. 172, § 5, p. 312; am. 1957, ch. 274, § 3, p. 632; am. 1969, ch. 213, § 4, p. 614; am. 1998, ch. 25, § 1, p. 140.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-1202.

Effective Dates. — Section 3 of S.L. 1998, ch. 25 declared an emergency and provided

that this act shall be in full force and effect on and after its passage and approval. Approved March 11, 1998.

22-1206. Penalty for tax defaults. — Any handler, dealer or grower who fails to make collection or file return or to pay any tax within the time required by or pursuant to this act shall thereby forfeit to the state a penalty of ten per cent (10%) of the amount of tax determined to be due, as provided in this act, plus one and one-half percent (1 1/2%) of such amount of tax determined to be due for each month of delay or fraction thereof after the expiration of the first month after such return was required to be filed or such tax became due; but the commission, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid to the Idaho potato commission and disposed of as provided with respect to moneys derived from the taxes levied and imposed by this act. [1939, ch. 172, § 6, p. 312; am. 1973, ch. 121, § 2, p. 229; am. 1985, ch. 109, § 2, p. 212.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-1202.

Effective Dates. — Section 5 of S.L. 1973,

ch. 121 declared an emergency. Approved March 8, 1973.

22-1207. Powers and duties of commission. — The powers and duties of the commission shall include the following:

- (1) To adopt and from time to time alter, rescind, modify and/or amend all proper and necessary rules and orders for the exercise of its powers and the performance of its duties under this chapter.
- (2) To contract and be contracted with.

(3) To employ and at its pleasure discharge agents, personnel, and such other help as it deems necessary and to outline their powers and duties and fix their compensation.

(4) To make in the name of the commission such agreements as may be necessary.

(5) To keep books, records and accounts of all its doings, which books, records and accounts shall be open to inspection by the state controller at all times.

(6) To purchase or authorize the purchase of all office equipment and supplies and to incur all other reasonable and necessary expenses and obligations in connection with and required for the proper carrying out of the provisions of this chapter.

(7) To cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state, or the United States government, engaged in work or activity similar to the work and activities of the commission, and to enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of research, education, product protection, promotion and reciprocal enforcement of these objectives.

(8) To investigate and prosecute in the name of the state of Idaho violations of this chapter or any suit or action for the collection of fees, taxes or penalties as hereinafter provided, or to protect brands, marks, packages, brand names, trademarks, certification marks or other intellectual property rights being promoted or used by the commission.

(9) To lease, purchase or own the real or personal property deemed necessary in the administration of this chapter.

(10) To define and describe such grade or grades of potatoes in accordance with the provisions of this chapter.

(11) To define and designate the character of the brands, labels, stencils, or other distinctive marks under which said potatoes may be promoted in order to secure the greatest returns to producers.

(12) To devise and require the application of either a seal, label, brand, package, or any other suitable device that will protect the identity of the original Idaho pack of potatoes as near to the final consumer as possible.

(13) Whenever and wherever it deems it to be necessary the commission shall use its offices to prevent any substitution of other potatoes for Idaho potatoes and to prevent the misrepresentation, mislabeling or the misbranding of Idaho potatoes at any and all times at any and all points where they discover the same is being done and to require the disclosure of the growing area of origin upon potato containers by all persons doing business in the state of Idaho.

(14) To require all those using any of the Idaho potato trade or certification marks, or handling or packing potatoes grown in Idaho, to execute an agreement in the form prescribed by the commission to ensure compliance with the provisions of this chapter.

(15) To devise a suitable system for tracking shipments of Idaho potatoes and Idaho potato products to prevent the misrepresentation, mislabeling or the misbranding of Idaho potatoes.

(16) To prevent the unlicensed use of the Idaho potato trade or certification marks including, but not limited to, the marks "Grown in Idaho," "Famous Idaho Potatoes" and "Idaho Potatoes."

(17) To make, conduct or carry on studies and research in connection with the raising, production and promotion of potatoes, including study and research dealing with the industrial and other uses of potatoes and their byproducts, and the extension and stabilization of markets for such commodities; to disseminate information with respect to such study and research as a part of the commission's promotional activities authorized by this chapter and to assist, aid and educate growers, dealers and handlers in the raising, production and promotion of potatoes.

(18) To require all persons with their principal place of business located in the state of Idaho to pay a one hundred dollar (\$100) annual license fee for use of any Idaho potato trade or certification mark and to require all persons with their principal place of business located outside of the state of Idaho to pay a three hundred dollar (\$300) annual license fee for use of any Idaho potato trade or certification mark.

For the accomplishment of such ends the commission is hereby empowered to employ the necessary persons or contract for the performance of required services; to cooperate with any organization of growers in this state, whether organized by authority of law or voluntary, engaged in carrying on similar activities and to participate jointly with any such organization, by contract or otherwise, in financing such study and research or paying for the employment of persons or services required or in carrying out projects and programs as herein contemplated; provided, however, expenditures authorized by the commission for the purposes herein mentioned shall not exceed an amount equal to twelve and one-half percent (12 1/2%) of the tax collected on potatoes levied and imposed pursuant to section 22-1211, Idaho Code.

Provided, further, that none of the powers specified in subsection (17) of this section shall be exercised, and no expenditure of revenue as provided in subsection (17) [(18)] of this section shall be authorized except upon the affirmative vote of six (6) or more of the members of the commission.

(19) The commission, in furtherance of its duties under this chapter and under its rules, shall have the power to administer oaths, certify to official acts and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony. The commission may, if a witness refuses to attend or testify, or to produce any papers required by such subpoenas, report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witnesses, or the production of said papers, that the witness has been properly summoned, and that the witness has failed and refused to attend or produce the papers required by this subpoena before the commission, or has refused to answer questions propounded to him in the course of said proceedings, and ask an order of said court compelling the witness to attend and testify and produce said papers before the commission. The court, upon the petition of the commission, shall enter an order directing the witness to appear

before the court at a time and place to be fixed by the court in such order, the time to be not more than ten (10) days from the date of the order, and then and there shall show cause why he had not attended and testified or produced said papers before the commission. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission and regularly served, the court shall thereupon order that said witness appear before the commission at the time and place fixed in said order, and testify or produce the required papers. Upon failure to obey said order, said witness shall be dealt with for contempt of court. Provided that in proceedings before the commission where evidence is sought from witnesses who are not residents of this state, the commission is authorized to obtain subpoenas issued by the clerk of the district court. Subpoenas so requested shall be issued by the clerk of the district court under the seal of the court, shall state the name of the court and the title of the administrative action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. Subpoenas shall be used only to require attendance of a witness at a deposition or hearing. The clerk shall issue a subpoena or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service. [1939, ch. 172, § 7, p. 312; am. 1955, ch. 156, § 1, p. 304; am. 1961, ch. 316, § 4, p. 603; am. 1967, ch. 297, § 1, p. 847; am. 1969, ch. 213, § 5, p. 614; am. 1972, ch. 399, § 1, p. 1160; am. 1981, ch. 310, § 1, p. 650; am. 1985, ch. 109, § 3, p. 212; am. 1993, ch. 211, § 1, p. 572; am. 1994, ch. 48, § 3, p. 78; am. 1994, ch. 180, § 15, p. 420; am. 1997, ch. 308, § 1, p. 913; am. 1998, ch. 25, § 2, p. 140; am. 2004, ch. 188, § 3, p. 582.]

STATUTORY NOTES

Amendments. — This section was amended by two 1994 acts — ch. 48, § 3, effective July 1, 1994 and ch. 180, § 15, effective January 2, 1995 contingent on the adoption of S.J.R. 109 at the 1994 general election — which do not appear to conflict and have been compiled together.

The 1994 amendment, by ch. 48, § 3, substituted “require” for “arrange for” near the beginning of subdivision (9); and in subdivision (10), inserted “mislabeling” following “misrepresentation,” and added “and to require the disclosure of the growing area of origin upon potato containers by all persons doing business in the state of Idaho.”

The 1994 amendment, by ch. 180, § 15, in subdivision (5), substituted “by the state controller” for “and audit by the state auditor”.

Compiler’s Notes. — The bracketed insertion in the last paragraph in subsection (18) was added by the compiler, because, when added to this section in 1961, the corrected reference was to what is now the second paragraph in subsection (18).

Effective Dates. — Section 2 of S.L. 1993, ch. 211 declared an emergency. Approved March 26, 1993.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 15 of S.L. 1994, ch. 180 became effective January 2, 1995.

Section 2 of S.L. 1997, ch. 308 declared an emergency. Approved March 24, 1997.

Section 3 of S.L. 1998, ch. 25 declared an emergency and provided that this act shall be in full force and effect on and after its passage and approval. Approved March 11, 1998.

Section 7 of S.L. 2004, ch. 188 declared an emergency. Approved March 23, 2004.

JUDICIAL DECISIONS

ANALYSIS

Employees.

Suits for infringement.

Employees.

This section circumscribes the employer's power to contract with its employees for any form of employment other than at-will employment. Regardless of any representations of the director or the supervisor, this negates any employment by the employee other than at-will employment. *Strongman v. Idaho Potato Comm'n*, 129 Idaho 766, 932 P.2d 889 (1997).

Suits for Infringement.

In a suit against defendants for infringement of trademark "Idaho" and for unfair competition, the Idaho potato commission, rather than the state, was a real party in interest since the commission is an independent self-governing state agency operating with a special fund. *Idaho Potato Comm'n v. Washington Potato Comm'n*, 410 F. Supp. 171 (D. Idaho 1975).

22-1208. Commodity facts and benefits — Promotion. — The commission is authorized and directed to disseminate information:

(a) Relating to potatoes and the importance thereof in preserving the public health, the economy thereof in the diet of the people and the importance thereof in the nutrition of children;

(b) Relating to the manner, method and means used and employed in the production, transportation, promotion and grading of potatoes and to laws of the state regulating and safeguarding such production, transportation, promotion and grading;

(c) Relating to the added cost to the producer and dealer in producing and handling potatoes to meet the high standards imposed by the state that insure a pure and wholesome product;

(d) Relating to the effect upon the public health which would result from a breakdown of the Idaho potato industry;

(e) Relating to the reasons why producers and dealers should receive a reasonable return on their labor and investment;

(f) Relating to the problem of furnishing the consumer at all times with an abundant supply of fine quality potatoes at reasonable prices;

(g) Relating to factors of instability peculiar to the vegetable industry in general, and the potato industry in particular, such as unbalanced production, effect of the weather, influence of consumer purchasing power and price relative to the cost of other items of food in the normal diet of people, all to the end that an intelligent and increasing consumer demand may be created;

(h) Relating to the possibilities of increased consumption of Idaho potatoes;

(i) Relating to such other, further and additional information as shall tend to promote increased consumption of Idaho potatoes, as may foster a better understanding and more efficient cooperation between producers, dealers and the consuming public;

(j) Relating to branding, labeling, stenciling, sealing or packaging to promote and use Idaho potatoes and to protect their identity as far as possible to the final consumer. [1939, ch. 172, § 8, p. 312; am. 1969, ch. 213, § 6, p. 614; am. 2004, ch. 188, § 4, p. 582.]

STATUTORY NOTES

Effective Dates. — Section 7 of S.L. 2004, ch. 188 declared an emergency. Approved March 23, 2004.

22-1209. Deposit and disbursement of funds. — (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the director of legislative services and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code. [I.C., § 22-1209, as added by 1988, ch. 52, § 2, p. 76; am. 1993, ch. 327, § 6, p. 1186; am. 1994, ch. 180, § 16, p. 420; am. 1996, ch. 159, § 7, p. 502; am. 2003, ch. 32, § 4, p. 115.]

STATUTORY NOTES

Prior Laws. — Former § 22-1209, which comprised 1939, ch. 172, § 9, p. 312; am. 1957, ch. 274, § 4, p. 632; am. 1969, ch. 213, § 7, p. 614, was repealed by S.L. 1988, ch. 52, § 1.

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided that such act should

become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment

was adopted, the amendment to this section by § 16 of S.L. 1994, ch. 180 became effective January 2, 1995.

22-1210. Limit on state liability — Compensation and expenses.

— All contractual expenses incurred by the commission in performing its duties and exercising its powers shall be without liability on the part of the state. All tort obligations arising out of acts and omissions of the commission are binding on the state of Idaho as, and to the extent provided for, in chapter 9, title 6, Idaho Code.

No member of the commission shall receive any compensation for his services as such member, except as provided in section 22-1202, Idaho Code, but members and employees of the commission and other persons acting under the direction of the commission shall, if approved by the commission, be reimbursed for their actual and reasonable expenses incurred in performing their duties under this chapter. [I.C., § 22-1210, as added by 1973, ch. 121, § 4, p. 229; am. 1988, ch. 52, § 3, p. 76; am. 1999, ch. 64, § 2, p. 167; am. 2000, ch. 12, § 1, p. 25.]

STATUTORY NOTES

Prior Laws. — Former § 22-1210, which comprised 1939, ch. 172, § 10, p. 312; am. 1947, ch. 24, § 1, p. 23; am. 1957, ch. 274, § 5, p. 632; am. 1969, ch. 213, § 8, p. 614, was repealed by S.L. 1973, ch. 121, § 3, p. 229.

Effective Dates. — Section 5 of S.L. 1973, ch. 121 declared an emergency. Approved March 8, 1973.

Section 3 of S.L. 1999, ch. 64 declared an emergency. Approved March 15, 1999.

Section 2 of S.L. 2000, ch. 12 declared an emergency retroactively to January 1, 1993 and approved March 3, 2000.

JUDICIAL DECISIONS

Suit for Trademark Infringement.

Although the power to sue and be sued has not been conferred upon the commission, the commission is an independent self-governing state agency which is financed through its own taxing power and which has the traditionally nongovernmental function of carry-

ing out advertising and promotion; so, therefore, the commission was the real party in interest in a suit for infringement of the trademark "Idaho." *Idaho Potato Comm'n v. Washington Potato Comm'n*, 410 F. Supp. 171 (D. Idaho 1975).

22-1211. Tax levy. — There is hereby levied and imposed a tax of four cents (4¢) per hundredweight on potatoes covered by this chapter, which tax shall be due on or before the time when such potatoes are first handled in the primary channels of trade and shall be paid at such time or times as the commission may by rule prescribe, but not later than the fifteenth day of the month next succeeding the month in which such potatoes were handled in the primary channels of trade. The commission is authorized to make appropriate rules to implement the collection of the taxes imposed by this chapter.

In addition to the four cent (4¢) tax hereinabove provided for, there is hereby levied and imposed an additional tax of eleven cents (11¢) per hundredweight on potatoes covered by this chapter; provided however, said additional tax of eleven cents (11¢), or any portion thereof, shall only be due

and collectible upon a determination by at least two-thirds (2/3) of the commission members that the anticipated expenditures for the next fiscal year following the year in which the determination is made will exceed the anticipated tax revenues to be collected from the said four cent (4¢) tax. Upon such a determination, the commission shall collect the additional eleven cent (11¢) tax or such portion thereof as is required by such determination, which shall be collected with, and as, other taxes imposed by this chapter.

The person first selling or otherwise delivering potatoes into primary channels of trade shall be responsible for and make payment of all taxes imposed by this chapter. If such person is the dealer or shipper handling potatoes grown by another, he may charge against and recover from the grower of such potatoes or the person from whom he acquired them sixty percent (60%) of the tax. [1939, ch. 172, § 11, p. 312; am. 1947, ch. 24, § 2, p. 23; am. 1955, ch. 156, § 2, p. 304; am. 1967, ch. 297, § 2, p. 847; am. 1969, ch. 213, § 9, p. 614; am. 1972, ch. 399, § 2, p. 1160; am. 1974, ch. 114, § 1, p. 1281; am. 1981, ch. 310, § 2, p. 650; am. 1985, ch. 109, § 4, p. 212; am. 1987, ch. 128, § 1, p. 259; am. 2007, ch. 57, § 1, p. 140.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 57, throughout the section, substituted “chapter” for “act”; in the introductory paragraph, twice deleted “regulation” following “rule,” or similar language; and throughout the second paragraph, substituted “eleven cents” for “six cents.”

Effective Dates. — Section 3 of S.L. 1955,

ch. 156 provided the act would be effective on and after July 1, 1955.

Section 2 of S.L. 1974, ch. 114, declared an emergency. Approved March 27, 1974.

Section 5 of S.L. 1985, ch. 109 provided that the act should take effect on and after January 1, 1985.

JUDICIAL DECISIONS

Suit for Trademark Infringement.

Although the power to sue and be sued has not been conferred upon the commission, the commission is an independent self-governing state agency which is financed through its own taxing power and which has the traditionally nongovernmental function of carry-

ing out advertising and promotion; so, therefore, the commission was the real party in interest in a suit for infringement of the trademark “Idaho.” *Idaho Potato Comm’n v. Washington Potato Comm’n*, 410 F. Supp. 171 (D. Idaho 1975).

22-1211A. Referendum of continuance of additional tax. — As soon as possible after July 1, 1972, the commissioner of agriculture shall conduct a referendum among all eligible growers to determine whether or not the additional tax of one cent (1¢) shall be continued. An eligible grower for the purpose of the referendum shall be any grower engaged in the growing of five (5) or more acres of potatoes.

All provisions relating to the referendum shall be prescribed by and supervised by the commissioner of agriculture.

The commission shall pay the costs of the referendum.

The results of the referendum shall be declared by the commissioner of agriculture, and the results recorded in the office of the secretary of state.

If a majority of the eligible growers voting, who grow a majority of the hundredweight of potatoes grown by those voting in the referendum, or if two-thirds (2/3) of the eligible growers voting in the referendum, are in favor of continuance of the additional tax of one cent (1¢), the additional tax of one cent (1¢) shall be continued, but if the results of the referendum do not show the required majority or majorities, the additional tax of one cent (1¢) shall be discontinued immediately upon declaration of the results of the referendum by the commissioner of agriculture. If the additional tax of one cent (1¢) is discontinued, the tax of two and one-fourth cents (2 1/4¢) shall continue in full force and effect. [I.C., § 22-1211A, as added by 1972, ch. 399, § 3, p. 1160.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 1972, ch. 399, provided that this act should take effect on and after July 1, 1972.

22-1212. Dealers' records — Tax returns. — Every dealer, or handler shall keep a complete and accurate record of all potatoes handled by him in the primary channel of trade, such record shall be in such form as the commission shall by regulation or rule prescribe. Such records shall be preserved by such dealer or handler for a period of two (2) years and shall be open to inspection at any time upon written or oral request or demand by the commission or its duly authorized agent or employee. Every dealer or handler shall at such times as the commission may by rule or regulation require file with the commission a return under oath on forms to be prescribed and furnished by the commission, stating the quantity of potatoes handled by such dealer or handler in the primary channel of trade during the period or periods of time prescribed by the commission. Such returns shall contain such further information as the commission may require. [1939, ch. 172, § 12, p. 312; am. 1969, ch. 213, § 10, p. 614.]

STATUTORY NOTES

Effective Dates. — Section 11 of S.L. 1969, ch. 213 provided that this act shall be in full force and effect on and after July 1, 1969.

22-1213. Penalty for violations. — (1) Any person who shall violate or aid in the violation of any of the provisions of this chapter, any rules promulgated pursuant thereto, or the terms of any licensing agreement may be assessed a civil penalty by the commission or its duly authorized agent of not more than one thousand dollars (\$1,000) for each offense and a civil penalty of not more than one thousand dollars (\$1,000) for each day of continuing violation of such statute or rule or licensing agreement and shall be liable for investigatory costs and attorney's fees reasonably incurred by the commission in connection with the violation.

(2) For purposes of this section, each container of potatoes in violation of this chapter, rules or any licensing agreement, shall constitute a separate violation for each day the container is in violation thereof.

(3) Procedure. No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to chapter 52, title 67, Idaho Code. If the commission or its agent is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the commission or its agent, it may enforce its penalty by action in the appropriate district court. Any person against whom the commission or its agent has assessed a civil penalty pursuant to this section may, within twenty-eight (28) days of the final agency action making the assessment, appeal the assessment in accordance with chapter 52, title 67, Idaho Code. All penalties collected pursuant to this section shall be paid into the general fund of the Idaho potato commission. Nothing contained in this section shall be deemed to preclude the commission from pursuing any other civil or criminal remedies available to it as provided by law. [1939, ch. 172, § 14, p. 312; am. 1991, ch. 40, § 1, p. 79; am. 1993, ch. 216, § 3, p. 587; am. 1994, ch. 48, § 2, p. 78; am. 2004, ch. 188, § 5, p. 582.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1991, ch. 40 declared an emergency. Approved March 12, 1991.

Section 7 of S.L. 2004, ch. 188 declared an emergency. Approved March 23, 2004.

JUDICIAL DECISIONS

ANALYSIS

Costs and fees.

Violations.

— Occurrence.

Costs and Fees.

Commission lacked authority to award itself costs and fees in administrative proceeding for violations of licensing agreement, as there was no separate provision for the award of attorney fees and costs within the chapters of the Idaho Code pertaining to the potato commission. *Idaho Potato Comm'n v. Russet Valley Produce, Inc.*, 127 Idaho 654, 904 P.2d 566 (1995).

Violations.

If civil penalties are to be assessed under § 22-1213, the Idaho potato commission must

assess them in administrative proceedings and then enforce them in district court if necessary; § 22-1213 does not explicitly or implicitly empower a court to impose the civil penalties. *Idaho Potato Comm'n v. G&T Terminal Packaging, Inc.*, 425 F.3d 708 (9th Cir. 2005).

— Occurrence.

Violations of licensing agreement to use "Grown in Idaho" trademark on potatoes occurred at the time of packing and did not "continue" while the potatoes were in transit. *Idaho Potato Comm'n v. Russet Valley Produce, Inc.*, 127 Idaho 654, 904 P.2d 566 (1995).

22-1214. Liberal construction — Separability. — This act shall be liberally construed, and if any part or portion thereof be declared invalid, or the application thereof to any person, circumstance or thing is declared invalid, the validity of the remainder of this act and/or the applicability thereof to any person, circumstance or thing shall not be affected thereby, and it is the intention of the legislature to preserve any and all parts of said act if possible. [1939, ch. 172, § 15, p. 312.]

STATUTORY NOTES

Compiler's Notes. — For words “this act” or “said act”, see Compiler's Notes, § 22-1202.

22-1215. Access to records. — All papers, records, correspondence, communications and proceedings of the Idaho potato commission shall be subject to disclosure according to chapter 3, title 9, Idaho Code. [I.C., § 22-1215, as added by 1985, ch. 210, § 1, p. 519; am. 1990, ch. 213, § 17, p. 480.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1985, ch. 210 declared an emergency. Approved March 21, 1985.

Section 111 of S.L. 1990, ch. 213, as amended

by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

CHAPTER 13

DEALERS IN FARM PRODUCE

SECTION.

22-1301 — 22-3317. [Repealed.]

22-1301. Definitions. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1935, ch. 139, § 1, p. 335; am. 1943, ch. 141, § 1, p. 284; am. 1974, ch. 18, § 16, p. 364; am. 1982, ch. 93, § 1, p. 175; am. 1992, ch. 39, § 1, p. 137, was repealed by S.L. 2009, ch. 31, § 1.

22-1302. Exemptions from act. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1935, ch. 139, § 2, p. 335; am. 1965, ch. 86, § 1, p. 146, was repealed by S.L. 2009, ch. 31, § 1.

22-1303. License required — Application, additional bond, issuance, fees. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1939, ch. 146, § 3, p. 335; am. 1974, ch. 18, § 17, p. 364; am. 1987, ch. 17, § 1, p. 21; am. 1990, ch. 171, § 1, p. 369; am. 1994, ch. 97, § 1, p. 222; am. 1995, ch. 101, § 1, p. 326, was repealed by S.L. 2009, ch. 31, § 1.

22-1304. Bond — Certificate of deposit in lieu of bond. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1939, ch. 146, § 1, p. 263; am. 1959, ch. 213, § 1, p. 468; am. 1987, ch. 17, § 2, p. 21; am. 2000, ch. 143, § 1, p. 372, was repealed by S.L. 2009, ch. 31, § 1.

**22-1305. Requirements of dealers in paying for farm products.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1935, ch. 139, § 4, p. 335, was repealed by S.L. 2009, ch. 31, § 1.

22-1306. List of licensees — Posting of licenses — Disposition of fees. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1935, ch. 139, § 5, p. 335; am. 1974, ch. 18, § 18, p. 364, was repealed by S.L. 2009, ch. 31, § 1.

22-1307. Cash buyers. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1935, ch. 139, § 6, p. 335; am. 1974, ch. 18, § 19, p. 364, was repealed by S.L. 2009, ch. 31, § 1.

22-1308. Rules — Enforcement of act. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1935, ch. 139, § 7, p. 335; am. 1974, ch. 18, § 20, p. 364; am. 1995, ch. 101, § 2, p. 326, was repealed by S.L. 2009, ch. 31, § 1.

22-1309. Investigations, examinations or inspections — Complaints by consignors. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1935, ch. 139, § 8, p. 335; am. 1974, ch. 18, § 21, p. 364, was repealed by S.L. 2009, ch. 31, § 1.

22-1310. Refusal, revocation or suspension of licenses. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1935, ch. 139, § 9, p. 335; am. 1974, ch. 18, § 22, p. 364, was repealed by S.L. 2009, ch. 31, § 1.

22-1311. Review of granting or refusal of license. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1935, ch. 139, § 10, p. 335; am. 1974, ch. 18, § 23, p. 364, was repealed by S.L. 2009, ch. 31, § 1.

22-1312. Records to be kept by commission merchants. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section, which comprised 1935, ch. 139, § 11, p. 335, was repealed by S.L. 2009, ch. 31, § 1.

22-1313. Report of sales by commission merchants — Remittances to consignor — Certificate of department. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section, which comprised 1935, ch. 139, § 12, p. 335; am. 1943, ch. 160, § 1, p. 323; am. 1974, ch. 18, § 24, p. 364; am. 1990, ch. 213, § 18, p. 480, was repealed by S.L. 2009, ch. 31, § 1.

22-1314. Certain sales prima facie fraudulent. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section, which comprised 1935, ch. 139, § 13, p. 335, was repealed by S.L. 2009, ch. 31, § 1.

22-1315. Violations and penalties — Criminal — Civil — Venue of actions and prosecutions. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section, which comprised 1935, ch. 139, § 14, p. 335; am. 2002, ch. 114, § 1, p. 325, was repealed by S.L. 2009, ch. 31, § 1.

22-1316. Drawing checks insufficiently covered a felony. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section, which comprised 1935, ch. 139, § 15, p. 335, was repealed by S.L. 2009, ch. 31, § 1.

22-1317. Separability. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section, which comprised 1935, ch. 139, § 17, p. 335, was repealed by S.L. 2009, ch. 31, § 1.

CHAPTER 14

CHEMIGATION

SECTION.

22-1401 — 22-1411. Definitions — Use of irrigation system — Compliance with regulations — Determination of compliance by director — List of types of systems — Duties of supplies of pesticides,

SECTION.

fertilizer or herbicide — License — Chemigation without license — Stop work order — Use of fees collected — Penalties. [Repealed.]

22-1412 — 22-1419. [Repealed.]

22-1401 — 22-1411. Definitions — Use of irrigation system — Compliance with regulations — Determination of compliance by director — List of types of systems — Duties of supplies of pesticides, fertilizer or herbicide — License — Chemigation without license — Stop work order — Use of fees collected — Penalties. [Repealed.]

STATUTORY NOTES

Prior Laws. — The following former sections were repealed by S.L. 1982, ch. 94, § 1:

22-1401. (1935, ch. 124, § 2 redesignated § 1, p. 287; am. 1937, ch. 109, § 1, p. 164; am. 1957, ch. 37, § 1, p. 68; am. 1970, ch. 94, § 1, p. 235; am. 1974, ch. 18, § 25, p. 364).

22-1402. (1935, ch. 124, § 2, p. 287; am. 1957, ch. 37, § 2, p. 68).

22-1403. (1935, ch. 124, § 3, p. 287; am. 1937, ch. 109, § 2, p. 164; am. 1957, ch. 37, § 3, p. 68).

22-1404. (1935, ch. 124, § 4, p. 287; am. 1957, ch. 37, § 4, p. 68; am. 1974, ch. 18, § 26, p. 364).

22-1405. (1935, ch. 124, § 5, p. 287).

22-1406. (1935, ch. 124, § 6, p. 287; am. 1957, ch. 37, § 5, p. 68; am. 1970, ch. 94, § 2, p. 235; am. 1974, ch. 18, § 27, p. 364).

22-1407. (1935, ch. 124, § 7, p. 287; am. 1957, ch. 37, § 6, p. 68; am. 1970, ch. 94, § 3, p. 235).

22-1408. (1935, ch. 124, § 8, p. 287; am. 1957, ch. 37, § 7, p. 68; am. 1974, ch. 18, § 28, p. 364).

22-1409. (1935, ch. 124, § 9, p. 287).

22-1410. (1935, ch. 124, § 10, p. 287; am. 1957, ch. 37, § 8, p. 68; am. 1974, ch. 18, § 29, p. 364).

22-1411. (1935, ch. 124, § 11, p. 287).

Compiler's Notes. — The following sections were repealed by S.L. 1999, ch. 69, § 1:

22-1401. (I.C., § 22-1401, as added by 1989, ch. 424, § 1, p. 1048; am. 1996, ch. 20, § 1, p. 37).

22-1402. (I.C., § 22-1402, as added by 1989, ch. 424, § 1, p. 1048).

22-1403. (I.C., § 22-1403, as added by 1989, ch. 424, § 1, p. 1048).

22-1404. (I.C., § 22-1404, as added by 1989, ch. 424, § 1, p. 1048).

22-1405. (I.C., § 22-1405, as added by 1989, ch. 424, § 1, p. 1048).

22-1406. (I.C., § 22-1406, as added by 1989, ch. 424, § 1, p. 1048).

22-1407. (I.C., § 22-1407, as added by 1989, ch. 424, § 1, p. 1048; am. 1993, ch. 68, § 1, p. 181; am. 1996, ch. 20, § 2, p. 37).

22-1408. (I.C., § 22-1408, as added by 1989, ch. 424, § 1, p. 1048; am. 1995, ch. 100, § 1, p. 326; am. 1996, ch. 20, § 3, p. 37; am. 1998, ch. 101, § 1, p. 349).

22-1409. (I.C. § 22-1409, as added by 1989, ch. 424, § 1, p. 1048).

22-1410. (I.C. § 22-1410, as added by 1989, ch. 424, § 1, p. 1048).

22-1411. (I.C. § 22-1411, as added by 1989, ch. 424, § 1, p. 1048).

22-1412 — 22-1419. Consignment agreement — Records — Examination of books — Rules and regulations — Publication of reports — Penalty — Separability — Bonded warehouse law. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — The following sections were repealed by S.L. 1982, ch. 94, § 1:

22-1412. (1935, ch. 124, § 12, p. 287; am. 1974, ch. 18, § 30, p. 364).

22-1413. (1935, ch. 124, § 13, p. 287; am. 1974, ch. 18, § 31, p. 364).

22-1414. (1935, ch. 124, § 14, p. 287; am. 1974, ch. 18, § 32, p. 364).

22-1415. (1935, ch. 124, § 15, p. 287; am. 1974, ch. 18, § 33, p. 364).

22-1416. (1935, ch. 124, § 16, p. 287; am. 1957, ch. 37, § 9, p. 68; am. 1974, ch. 18, § 34, p. 364).

22-1417. (1935, ch. 124, § 17, p. 287; am. 1974, ch. 18, § 35, p. 364).

22-1418. (1935, ch. 124, § 18, p. 287).

22-1419. (1935, ch. 124, § 19, p. 287; am. 1974, ch. 18, § 36, p. 364).

For present law, see §§ 69-501 — 69-525.

CHAPTER 15

SEED AND PLANT CERTIFICATION

SECTION.

22-1501. Certification of seeds and plants — Regulation of certification to be in public interest.

22-1502. Compliance with regulations required where certain phrases used.

22-1503. Definitions.

22-1504. Administration of the chapter.

22-1505. Rules and regulations — Preparation and promulgation.

SECTION.

22-1506. Fees charged by certifying agency.

22-1507. Maintenance of seed stocks.

22-1508. Delegation of authority.

22-1509. Liability of regents limited.

22-1510. Review of action taken under provisions of law.

22-1511. Title.

22-1501. Certification of seeds and plants — Regulation of certification to be in public interest. — Certification of varieties or strains of seeds, tubers, plants and plant parts raised in the state of Idaho and offered or intended to be offered for sale is in the public interest and a proper subject of regulation by the state of Idaho. [I.C., § 22-1101, as added by 1990, ch. 413, § 2, p. 1144; am. and redesign. 2005, ch. 25, § 16, p. 82.]

STATUTORY NOTES

Prior Laws. — Former § 22-1501, which comprised S.L. 1917, ch. 119, § 1, p. 406; C.L., § 79:26; C.S., § 2046; I.C.A., § 22-1101, was repealed by S.L. 1967, ch. 145, § 1, p. 331.

Compiler's Notes. — Chapters 145, 413 and 426, S.L. 1990 each purported to create a new chapter 11 of title 22. Chapter 145 was compiled as title 22, chapter 11 (§§ 22-1101

— 22-1107); chapter 413 was compiled as title 22, chapter [15] 11 (§§ [22-1501] 22-1101 — [22-1511] 22-1111, which renumbering was made permanent by S.L. 1993, ch. 69 and S.L. 2005, chapter 25); chapter 426 was compiled as title 22, chapter [22] 11 (§§ [22-2201] 22-1101 — [22-2212] 22-1112) and was subsequently repealed by S.L. 2001, chapter 250.

22-1502. Compliance with regulations required where certain phrases used. — Every person, firm, association or corporation who shall issue, use or circulate, any certificate, advertisement, tag, seal, poster, letterhead, marking, circular, written or printed representation or description, of or pertaining to lots of seeds, tubers, plants or plant parts intended for propagation or sale, or sold or offered for sale wherein the words "Idaho State Certified," "State Certified," "Idaho Certified," or similar words or phrases are used or employed, or wherein are used or employed signs, symbols, maps, diagrams, picture words or phrases expressly or impliedly stating or representing that such seed, tubers, plants or plant parts comply with or conform to the standards or requirements approved by the Idaho agricultural experiment station in the college of agriculture of the university

of Idaho shall be subject to the provisions of this chapter. [I.C., § 22-1102, as added by 1990, ch. 413, § 2, p. 1144; am. and redesisg. 2005, ch. 25, § 17, p. 82.]

STATUTORY NOTES

Prior Laws. — Former § 22-1502, which comprised S.L. 1917, ch. 119, § 2, p. 406; C.L., § 79:28; C.S., § 2048; I.C.A., § 22-1102, was repealed by S.L. 1967, ch. 145, § 1, p. 331.

Compiler's Notes. — As to redesignation of section, see Compiler's Notes, § 22-1501.

22-1503. Definitions. — (1) "Breeder seed" means seed or vegetative propagating material directly controlled by the originating, or in certain cases the sponsoring plant breeder or institution, and which provides the source for the initial increase of foundation seed.

(2) "Certified" means the written assurance, in certificate form, of the college of agriculture of the university of Idaho, or of its agent designated hereunder, that the particular seeds, tubers, plants or plant parts have the necessary genetic purity of strain and/or other characteristics to meet the requirements of the rules and regulations promulgated hereunder. Certification by the certifying agent or college of agriculture of the university of Idaho, or its agent, or state of Idaho does not constitute any warranty that certified seeds, tubers, plants or plant parts will be free from disease or contamination.

(3) "Foundation seed" means the progeny of breeder seed stocks that are so handled as to maintain specific genetic identity and purity, and that are designated or distributed by the Idaho agricultural experiment station or private companies.

(4) "Genetic purity" means that the lot of seeds, tubers, plants or plant parts are homogenous for inheritable characteristics as stated in the official description of the variety or strain represented.

(5) "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors which appear in the labeling.

(6) "Plant" or "tubers" or "plants" or "plant parts" mean any variety or strain of plant or part thereof which may be eligible for certification, as hereinafter provided.

(7) "Seed" or "seeds" mean the seed of any variety or strain of plant, including tubers, which may be eligible for certification, as hereinafter provided.

(8) "Variety or strain" means a subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristics, by which it can be differentiated from other plants of the same kind. [I.C., § 22-1103, as added by 1990, ch. 413, § 2, p. 1144; am. and redesisg. 1993, ch. 69, § 1, p. 182.]

STATUTORY NOTES

Compiler's Notes. — As to redesignation of section, see Compiler's Notes, § 22-1501.

22-1504. Administration of the chapter. — The regents of the university of Idaho through the Idaho agricultural experiment station in the college of agriculture of the university of Idaho, or the agent of the university of Idaho, an entity or servant of the state, appointed in writing, as hereinafter provided, is hereby authorized to administer the provisions of this chapter to establish, alter, amend and repeal, in compliance with the provisions of chapter 52, title 67, Idaho Code, reasonable rules and regulations as to what shall constitute certified seeds, tubers, plants and plant parts under the terms of this chapter. Such reasonable rules and regulations shall also comprehend and fix the standards necessary to qualify seeds, tubers, plants and plant parts for certification hereunder and procedures for certification by the said college of agriculture or the said agent thereof. All varieties or strains of seed, tubers, plants and plant parts eligible for certification in the state of Idaho shall be approved by the director of the Idaho agricultural experiment station. Any agent designated hereunder shall be a servant of the state of Idaho and shall be acting in an official capacity for the state of Idaho and under the supervision of the college of agriculture of the university of Idaho and the director of the Idaho experiment station consistent with this chapter. [I.C., § 22-1104, as added by 1990, ch. 413, § 2, p. 1144; am. and redesisg. 1993, ch. 69, § 2, p. 182.]

STATUTORY NOTES

Compiler's Notes. — As to redesignation of section, see Compiler's Notes, § 22-1501.

22-1505. Rules and regulations — Preparation and promulgation. — Every person, firm, association or corporation that intends to offer for sale, offers or sells seeds, tubers, plants or plant parts as certified shall comply with the provisions of this chapter and such rules and regulations as are promulgated by the Idaho agricultural experiment station in the college of agriculture of the university of Idaho as provided herein, such rules and regulations to contain, among other things, a designation of the crops grown or to be grown in Idaho eligible for certification with standards, requirements and procedure necessary for certification with designation of the agency authorized to provide certification.

Upon the passage of this chapter the Idaho agricultural experiment station in the college of agriculture of the university of Idaho shall prepare and issue such rules and regulations as are required by this chapter in compliance with the provisions of chapter 52, title 67, Idaho Code. [I.C., § 22-1105, as added by 1990, ch. 413, § 2, p. 1144; am. and redesisg. 2005, ch. 25, § 18, p. 82.]

STATUTORY NOTES

Compiler's Notes. — As to redesignation of section, see Compiler's Notes, § 22-1501.

22-1506. Fees charged by certifying agency. — Fees may be charged by the certifying agency, under schedules set forth in rules and regulations

for certification of seeds, tubers, plants and plant parts under this chapter, but these fees shall have a reasonable relation to the cost, and may be used only for expenses in connection with certification and improvement of certification services. [I.C., § 22-1106, as added by 1990, ch. 413, § 2, p. 1144; am. and redesisg. 2005, ch. 25, § 19, p. 82.]

STATUTORY NOTES

Compiler's Notes. — As to redesignation of section, see Compiler's Notes, § 22-1501.

22-1507. Maintenance of seed stocks. — The Idaho agricultural experiment station or an agent of the university of Idaho appointed, in writing, shall be responsible to obtain and maintain sources of basic seed stocks which include breeder class and foundation class seed of public varieties or strains of crops deemed appropriate by the director of the Idaho agricultural experiment station. Basic seed stocks, limited generation certified seed tubers, plant or plant parts shall first be made available for production in Idaho. This shall be accomplished through a system of equitable allocation to any person, firm, partnership, association, corporation or entity located in this state unless a contract or agreement entered into with another public research entity or institution provides otherwise. Price established for the basic seed stocks of seed, tubers, plants or plant parts shall be in reasonable relation to the cost of production, maintenance, handling, storage and processing necessary to meet standards set forth in the rules and regulations. [I.C., § 22-1107, as added by 1990, ch. 413, § 2, p. 1144; am. and redesisg. 2005, ch. 25, § 20, p. 82.]

STATUTORY NOTES

Compiler's Notes. — As to redesignation of section, see Compiler's Notes, § 22-1501.

22-1508. Delegation of authority. — The regents of the university of Idaho may delegate in writing its authority, or any part thereof, under this chapter to any instrumentality or entity as an agent and servant of the state whose principal purpose is to establish and maintain a uniform and reasonable system of certification of seeds, tubers, plants and plant parts. The delegated instrumentality or entity as agent and servant of the state shall be an entity of the state of Idaho as provided in the tort claims act, chapter 9, title 6, Idaho Code. The university will cooperate with the Idaho department of agriculture in seed analysis and inspection. [I.C., § 22-1108, as added by 1990, ch. 413, § 2, p. 1144; am. and redesisg. 1993, ch. 69, § 3, p. 182.]

STATUTORY NOTES

Compiler's Notes. — As to redesignation of section, see Compiler's Notes, § 22-1501.

JUDICIAL DECISIONS

Exception to Economic Loss Rule.

Idaho crop improvement association (ICIA), a private, nonprofit corporation which had been delegated the responsibility for administering a seed certification program under former § 22-429 (a repealed former section similar to this section) came within the “special relationship” exception to the economic

loss rule and thus if it was in fact negligent in the performance of its function, it should be liable for purely economic injury proximately caused by that negligence. *Duffin v. Idaho Crop Imp. Ass’n*, 126 Idaho 1002, 895 P.2d 1195 (1995). See also *Feld v. Idaho Crop Imp. Ass’n*, 126 Idaho 1014, 895 P.2d 1207 (1995).

22-1509. Liability of regents limited. — The regents of the university of Idaho shall not be financially responsible for debts incurred, damages inflicted, or contracts broken by the certifying agent in conducting certification work. The certifying agent shall be entitled to all the protections as provided in the tort claims act, chapter 9, title 6, Idaho Code. [I.C., § 22-1109, as added by 1990, ch. 413, § 2, p. 1144; am. and redesisg. 1993, ch. 69, § 4, p. 182.]

STATUTORY NOTES

Compiler’s Notes. — As to redesignation of section, see Compiler’s Notes, § 22-1501.

22-1510. Review of action taken under provisions of law. — Any person, firm, partnership, association or corporation aggrieved by any act or action taken under the provisions of this chapter law may, within thirty (30) days of such act or action, appeal to the district court within and for the district in which said act or action was committed for appropriate relief. It is further provided that any order or judgment of the district court pertaining to such appeal may be appealed to the Supreme Court of the state of Idaho in the manner in which appeals are made under the present code and procedure, provided, however, that on the appeal to the Supreme Court, the Supreme Court shall consider only questions of law. [I.C., § 22-1110, as added by 1990, ch. 413, § 2, p. 1144; am. and redesisg. 2005, ch. 25, § 21, p. 82.]

STATUTORY NOTES

Compiler’s Notes. — As to redesignation of section, see Compiler’s Notes, § 22-1501.

22-1511. Title. — This chapter shall be known as, and may be cited as, the “Seed and Plant Certification Act.” [I.C., § 22-1111, as added by 1990, ch. 413, § 2, p. 1144; am. and redesisg. 2005, ch. 25, § 22, p. 82.]

STATUTORY NOTES

Compiler’s Notes. — As to redesignation of section, see Compiler’s Notes, § 22-1501.

CHAPTER 16

PREVENTION OF PRICE DISCRIMINATION

SECTION.

22-1601. Discrimination in sale of farm products.

22-1602. Records subject to inspection.

22-1603. Penalty.

SECTION.

22-1604. Prosecution by attorney general.

22-1605. Penalty for disclosures.

22-1606. Separability.

22-1601. Discrimination in sale of farm products. — It is hereby made unlawful for any person, firm, company, partnership, copartnership, corporation, foreign or domestic, or association, or other organization doing business in the state of Idaho, who shall intentionally for the purpose of creating a monopoly or destroying the business of a competitor, in any locality, section, community, city or village, to discriminate between different individuals, corporations, partnerships, copartnerships, associations or organizations of any kind or to discriminate between different sections, localities, communities, villages or cities of this state in the purchase, barter, exchange or resale of farm products, either in the raw or manufactured state, when such products are purchased or sold under recognized standards and grades, as prescribed by the department of agriculture, after making due allowance for the difference, if any, in the actual cost of transportation from the locality of purchase in the raw state to the locality of manufacture, or from the locality of manufacture to the locality of sale, and in addition thereto allowance in the grade or quality of such products, if any. [1917, ch. 23, § 1, p. 62; reen. C.L. 79:31; am. 1919, ch. 18, § 1, p. 81; C.S., § 2051; am. 1921, ch. 189, § 1, p. 391; I.C.A., § 22-1201.]

STATUTORY NOTES

Cross References. — Cooperative marketing associations, § 22-2601 et seq.

Dairy products, discrimination and unfair

competition in buying and selling, § 37-1001 et seq.

Monopolies, § 48-101 et seq.

22-1602. Records subject to inspection. — All the books, papers and other records of every person, firm, corporation or other organization engaged in the business of buying or selling farm products, shall be subject to inspection by the department of agriculture, if it shall appear to the department that there are reasonable grounds to believe that there has been a violation of this chapter, and such person, firm, corporation or other organization shall, at such times as the department shall prescribe, make such further verified returns having a bearing on the provisions of this chapter as the department may prescribe. [1917, ch. 23, § 2, p. 62; reen. C.L. 79:32; C.S., § 2052; I.C.A., § 22-1202.]

STATUTORY NOTES

Compiler's Notes. — "Department of agriculture" has been substituted for "director of farm markets." S.L. 1919, ch. 8, § 38 (§ 67-3401) abolished the office of director of farm markets and § 26 (repealed by S.L. 1974, ch.

18, § 1) of such act vested the powers of the director of farm markets in the department of agriculture. Now see §§ 22-101 — 22-107 which created the department of agriculture and provided for its organization.

22-1603. Penalty. — Whoever shall violate any of the provisions of this chapter shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than \$100 nor more than \$1000 for each offense, and, if a corporation, may have its charter or permit to do business in this state forfeited. [1917, ch. 23, § 3, p. 62; reen. C.L. 79:33; C.S., § 2053; I.C.A., § 22-1203.]

22-1604. Prosecution by attorney general. — If any person, firm, corporation or other organization shall violate any of the provisions of this chapter, upon complaint thereof by the department of agriculture to the attorney general, setting forth the violations of this chapter complained of, it shall be the duty of the attorney general to proceed in the name of the state of Idaho against such person, firm, corporation or other organization. [1917, ch. 23, § 4, p. 63; reen. C.L. 79:34; C.S., § 2054; I.C.A., § 22-1204.]

22-1605. Penalty for disclosures. — No person shall disclose any fact or information obtained pursuant to or under the provisions of this chapter except for the purpose of prosecuting or aiding in the prosecution of persons charged with the violation of the terms of this chapter. And any person violating any of the provisions of this section shall be guilty of a misdemeanor and punished accordingly. [1917, ch. 23, § 5, p. 63; reen. C.L. 79:35; C.S., § 2055; I.C.A., § 22-1205.]

STATUTORY NOTES

Cross References. — Penalty for misdemeanor when not otherwise provided, § 18-113.

22-1606. Separability. — If any section, subsection, sentence, clause or phrase of this chapter or as the same may be hereafter amended, is for any reason held to be unconstitutional by any court of competent jurisdiction, the validity of the remaining parts of this chapter shall not thereby be affected or impaired. [1917, ch. 23, § 6, p. 63; reen. C.L. 79:36; C.S., § 2056; I.C.A., § 22-1206.]

CHAPTER 17

PREVENTION OF FRAUD IN SACKED PRODUCTS

SECTION.

22-1701, 22-1702. [Repealed.]

22-1701, 22-1702. Sacked products — Sale by net weight — Civil liability. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — The following sections were repealed by S.L. 1995, ch. 71, § 1, effective July 1, 1995. § 22-1701, which comprised 1917, ch. 154, § 1, p. 481; reen. C.L. 79:37; C.S., § 2057; I.C.A., § 22-1301.

§ 22-1702, which comprised 1917, ch. 154,
§ 2, p. 481; reen. C.L. 79:38; C.S., § 2058;
I.C.A., § 22-1302.

CHAPTER 18

IDAHO STATE PESTICIDE MANAGEMENT COMMISSION

SECTION.

22-1801. Commission on pesticide manage-
ment — Established — Com-
position — Duration of mem-
bership — Compensation —
Powers and duties.
22-1802. State appropriations — Restrictions

SECTION.

on use of state money — Com-
mission approval required.
22-1803. Deposit and disbursement of funds.
22-1804. Duties.
22-1805. Report on activities — Review by
legislature.

22-1801. Commission on pesticide management — Established — Composition — Duration of membership — Compensation — Powers and duties. — (1) A commission on pesticide management, hereinafter referred to in this chapter as “the commission,” is established. The commission shall be composed of eleven (11) voting members appointed by the governor as follows:

(a) Eight (8) members from the following segments of the state’s agricultural industry as nominated by a statewide private agricultural association or agricultural commodity commission formed under title 22, Idaho Code:

- (i) The tree fruit industry;
- (ii) Potato growers;
- (iii) Grain growers;
- (iv) Vegetable and seed growers;
- (v) Sugarbeet, bean and alfalfa growers;
- (vi) The nursery and landscape industry.

Although members are appointed from various segments of the agriculture industry, they are appointed to represent and advance the interests of the industry as a whole.

(b) One (1) member from each of the following:

- (i) Food processors;
- (ii) Agricultural chemical industry;
- (iii) Professional pesticide applicators.

One (1) member shall be appointed for each such segment of the industry and shall be nominated by a statewide, private association of that segment of the industry. The representative of the agricultural chemical industry shall be involved in the manufacture of agricultural crop protection products.

(c) The following shall be ex officio, nonvoting members of the commission:

- (i) Coordinator of the interregional project number four (IR-4) at the University of Idaho;
- (ii) Director of the department of environmental quality or the director’s designee;
- (iii) Director of the department of agriculture or the director’s designee;

- (iv) Director of the department of labor or the director's designee;
- (v) Director of the department of health and welfare or the director's designee.

(2) Each voting member of the commission shall serve a term of three (3) years. However, the first appointments in the first year shall be made by the governor for one (1), two (2) and three (3) year terms so that, in subsequent years, approximately one-third (1/3) of the voting members shall be appointed each year. The governor shall assign the initial one (1), two (2) and three (3) year terms to members by lot. A vacancy shall be filled by appointment for the unexpired term in the same manner provided for an appointment to the full term. No member of the commission may be removed by the governor during his or her term of office unless for cause of incapacity, incompetence, neglect of duty, or malfeasance in office. Each member of the commission may receive travel expenses for attending meetings of the commission and for performing special duties, in the way of official commission business, specifically assigned to the person by the commission. The voting members of the commission shall serve without compensation from the state other than travel expenses.

(3) Nominations for the initial appointments to the commission under subsection (1) of this section shall be submitted by July 15, 2002. The governor shall make initial appointments to the commission by August 15, 2002.

(4) The commission shall elect a chair from among its voting members each calendar year. After its original organizational meeting, the commission shall meet at the call of the chair or by a consensus of four (4) members of the commission. A majority of the voting members of the commission constitutes a quorum and an official action of the commission may be taken by a majority vote of the quorum.

(5) The powers and duties of the commission shall include the following:

- (a) To contract in the name of the commission and be contracted with;
- (b) To employ and at pleasure discharge a research director, research staff, a secretary, advertising manager, advertising agents, agents, attorneys, and such clerical and other help as it deems necessary and to control their powers and duties and to fix their compensation;
- (c) To keep books, records and accounts of all its dealings, which books, records and accounts of all its dealing shall be open to inspection by the state controller at all times;
- (d) To purchase or authorize the purchase of all office equipment and/or supplies and incur all other reasonable and necessary expenses and obligations in connection with and required for the proper carrying out of the provisions of this chapter. [I.C., § 22-1801, as added by 2002, ch. 112, § 1, p. 313.]

STATUTORY NOTES

Cross References. — State controller, § 2059; I.C.A., § 22-1401; am. 1969, ch. 22, § 67-1001 et seq. § 1, p. 44, was repealed by S.L. 1995, ch. 69,

Prior Laws. — Former § 22-1801, which comprised 1919, ch. 150, § 1, p. 473; C.S., § 1, effective July 1, 1995.

22-1802. State appropriations — Restrictions on use of state money — Commission approval required. — (1) This section applies to the use of state appropriations made to or legislatively intended for the commission on pesticide management and to any other moneys appropriated by the state and received by the commission on pesticide management:

(a) The moneys may not be expended without the express approval of the commission on pesticide management.

(b) The moneys may be used for:

(i) Evaluations, studies or investigations approved by the commission on pesticide management regarding the registration or reregistration of pesticides for minor crops or minor uses or regarding the availability of pesticides for emergency uses. These evaluations, studies or investigations may be conducted by any laboratory secured by the commission, researchers, or contractors by contract, which contracts may include, but are not limited to, those purchasing the use of proprietary information;

(ii) Evaluations, studies or investigations approved by the commission regarding research, implementation and demonstration of any aspect of integrated pest management and pesticide resistance management programs;

(iii) The tracking system described;

(iv) The support of the commission on pesticide management and its activities.

(2) The commission on pesticide management shall establish priorities to guide it in approving the use of moneys for evaluations, studies and investigations under this section. [I.C., § 22-1802, as added by 2002, ch. 112, § 1, p. 313.]

STATUTORY NOTES

Prior Laws. — Former § 22-1802, which comprised 1919, ch. 150, § 1, par. 2, p. 473; C.S., § 2060; I.C.A., § 22-1402; am. 1969, ch. 22, § 2, p. 44, was repealed by S.L. 1995, ch. 69, § 1, effective July 1, 1995.

22-1803. Deposit and disbursement of funds. — (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one (1) or more separate accounts in the name of the commission in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter. Any interest earned on the investment of idle moneys in an account shall be returned to the account.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. The report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited biennially, but shall address every year distinctly, by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the director of legislative services and to the senate agricultural affairs committee and the house of representatives agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code. [I.C., § 22-1803, as added by 2002, ch. 112, § 1, p. 313; am. 2003, ch. 32, § 5, p. 115.]

STATUTORY NOTES

Cross References. — State controller, C.S., § 2061; I.C.A., § 22-1403; am. 1969, ch. 22, § 3, p. 44, was repealed by S.L. 1995, ch. 69, § 1, effective July 1, 1995.

Prior Laws. — Former § 22-1803, which comprised 1919, ch. 150, § 1, par. 3, p. 473;

22-1804. Duties. — The commission on pesticide management shall:

(1) Encourage agricultural organizations to assist in providing funding, in-kind services, or materials for studies and investigations concerning the registration of pesticides and research, implementation and demonstration of any aspect of integrated pest management (IPM) and pesticide resistance management programs for minor crops and minor uses that would benefit the organizations.

(2) Provide guidance for:

(a) Tracking the availability of effective pesticides for minor crops, minor uses and emergency uses;

(b) Providing this information to organizations of agricultural producers;

(c) Maintaining close contact between laboratories, the department of agriculture, and organizations of agricultural producers regarding the need for research to support the registration of pesticides for minor crops and minor uses and the availability of pesticides for emergency uses.

(3) Ensure that the activities of the commission are coordinated with the activities of laboratories in the pacific northwest, university pest management programs, the United States department of agriculture, and the United States environmental protection agency to maximize the effectiveness of regional efforts to assist in the registration of pesticides for minor

crops and minor uses and in providing for the availability of pesticides for emergency uses for the region and the state.

(4) Ensure, prior to approving any residue study, that there is written confirmation of registrant support and willingness or ability to add the given minor crop to its label, including any restrictions or guidelines the registrant intends to impose. [I.C., § 22-1804, as added by 2002, ch. 112, § 1, p. 313.]

STATUTORY NOTES

Prior Laws. — Former § 22-1804, which comprised 1919, ch. 150, § 1, par. 4, p. 473; C.S., § 2062; I.C.A., § 22-1404, was repealed by S.L. 1995, ch. 69, § 1, effective July 1, 1995.

22-1805. Report on activities — Review by legislature. — (1) By January 15 of each year, the commission shall file with the legislature a report on activities supported by the commission for the previous fiscal year. The report shall include identification of:

- (a) The priorities that have been set by the commission;
- (b) The state appropriations made to the commission;
- (c) The evaluations, studies and investigations funded in whole or in part by such moneys and the registration and uses of pesticides made possible in large part by those evaluations, studies and investigations;
- (d) The matching moneys, in-kind services and materials provided by agricultural organizations for those evaluations, studies and investigations;
- (e) The program or programs for tracking pesticide availability provided by the laboratory under the guidance of the commission and the means used for providing this information to organizations of agricultural producers.

(2) During the regular session of the legislature the appropriate committees of the house of representatives and the senate shall evaluate the effectiveness of the commission in fulfilling its statutory responsibilities. [I.C., § 22-1805, as added by 2002, ch. 112, § 1, p. 313.]

CHAPTER 19

THE IDAHO INVASIVE SPECIES ACT OF 2008

SECTION.

- 22-1901. Title.
- 22-1902. Legislative findings.
- 22-1903. Administration.
- 22-1904. Definitions.
- 22-1905. Prohibited actions.
- 22-1906. Duties of the department and director.
- 22-1907. Rules and orders.
- 22-1908. Authority to conduct inspections.
- 22-1909. Disposition of invasive species.
- 22-1910. Hold order.

SECTION.

- 22-1911. Invasive species fund.
- 22-1912. Control and eradication costs — Deficiency warrants — Cooperation with other entities and citizens.
- 22-1913. Penalties for violations.
- 22-1914. Cooperative agreements.
- 22-1915. No effect on existing liability.
- 22-1916. Hold harmless.
- 22-1917. Severability.

22-1901. Title. — This chapter shall be known as “The Idaho Invasive Species Act of 2008.” [I.C., § 22-1901, as added by 2008, ch. 387, § 1, p. 1062.]

STATUTORY NOTES

Prior Laws. — The following sections were repealed by S.L. 2002, ch. 89, § 1, effective July 1, 2002:

22-1901, which comprised 1903, p. 347, part of § 6; reen. R.C., part of § 1315; am. 1909, p. 322, part of § 1, subd. 1315; am. 1911, ch. 58, part of § 5, p. 154; am. 1913, ch. 18, part of § 1, p. 81; am. 1917, ch. 141, last part of par. 1, p. 451; compiled and reen. C.L., § 1315a; C.S., § 2063; I.C.A., § 22-1501; am. 1987, ch. 187, § 1, p. 369; am. 1988, ch. 297, § 1, p. 937.

22-1902, which comprised I.C., § 22-1902, as added by 1988, ch. 297, § 3, p. 937.

22-1903, which comprised 1903, p. 347, § 6, last part; reen. R.C., § 1315, last part; am. 1909, p. 322, § 1, subd. 1315, last part of par. 2; reen. 1911, ch. 58, § 5, last part of par. 2, p. 155; am. 1913, ch. 18, § 1, last part of par. 2, p. 82; am. 1917, ch. 141, par. 3, p. 452; compiled and reen. C.L., § 1315c; C.S., § 2065; am. 1923, ch. 70, § 2, p. 76; I.C.A., § 22-1503; am. 1949, ch. 209, § 1, p. 444; am. 1988, ch. 297, § 4, p. 937.

22-1904, which comprised I.C., § 22-1904, as added by 1988, ch. 297, § 5, p. 937.

22-1905, which comprised 1903, p. 347, § 7;

reen. R.C., § 1316; am. 1913, ch. 18, § 2, p. 82; compiled and reen. C.L., § 1316; C.S., § 2066; I.C.A., § 22-1505; am. 1974, ch. 18, § 37, p. 364; am. 1988, ch. 297, § 6, p. 937.

22-1906, which comprised I.C., § 22-1906, as added by 1988, ch. 297, § 8, p. 937.

22-1907 — 22-1912 (formerly repealed by S.L. 1988, ch. 297, § 7).

22-1913, which comprised R.C., § 1326b, as added by 1911, ch. 58, § 11, p. 158; am. 1913, ch. 18, § 8, p. 80; compiled and reen. C.L., § 1326b; C.S., § 2077; am. 1921, ch. 33, § 2, p. 41; I.C.A., § 22-1516; am. 1947, ch. 33, § 1, p. 34; am. 1974, ch. 18, § 38, p. 364; am. 1988, ch. 297, § 9, p. 937.

22-1914, which comprised I.C., § 22-1914, as added by 1988, ch. 297, § 11, p. 937.

22-1915, which comprised I.C., § 22-1915, as added by 1988, ch. 297, § 12, p. 937.

22-1916, which comprised I.C., § 22-1916, as added by 1988, ch. 297, § 13, p. 937.

22-1917 — 22-1921 (formerly repealed by S.L. 1988, ch. 297, § 7).

22-1922, which comprised I.C., § 22-1922, as added by 1984, ch. 153, § 1, p. 367.

Effective Dates. — Section 2 of S.L. 2008, ch. 387 declared an emergency. Approved April 9, 2008.

22-1902. Legislative findings. — The legislature finds that:

(1) The purpose of this chapter is to address the concerns about the increasing threat of invasive species by providing policy direction, planning and authority to combat invasive species infestations throughout the state and to prevent the introduction of new species that may be harmful;

(2) The land, water and other resources of Idaho are being severely affected by invasions of an increasing number of harmful, invasive species;

(3) These invasions are damaging Idaho’s environment and causing economic hardships;

(4) Idaho is a national leader in the control of invasive species, particularly noxious weeds and agricultural pests, and has a strong network of local, state, federal, tribal and private entities actively and cooperatively combating the threat;

(5) Prevention, early detection, rapid response and eradication are the most effective and least costly strategies against invasive species because they combat new invasions before they expand beyond feasible control;

(6) Implementing these strategies requires the state of Idaho to enhance its capacity to prioritize risks, prevent new invasions, employ early detection and rapid response techniques, apply state of the art control and management strategies, coordinate multiple public and private efforts and involve the public;

(7) An effective invasive species program must foster and support local initiatives; and

(8) The multitude of public and private entities with an interest in controlling and preventing the spread of harmful invasive species in Idaho need a mechanism for cooperation and collaboration to meet the threat of invasive species. [I.C., § 22-1902, as added by 2008, ch. 387, § 1, p. 1062.]

STATUTORY NOTES

Prior Laws. — Former § 22-1902 was repealed. See Prior Laws, § 22-1901. ch. 387 declared an emergency. Approved April 9, 2008.

Effective Dates. — Section 2 of S.L. 2008,

22-1903. Administration. — This chapter shall be administered by the Idaho state department of agriculture. [I.C., § 22-1903, as added by 2008, ch. 387, § 1, p. 1063.]

STATUTORY NOTES

Prior Laws. — Former § 22-1903 was repealed. See Prior Laws, § 22-1901. ch. 387 declared an emergency. Approved April 9, 2008.

Effective Dates. — Section 2 of S.L. 2008,

22-1904. Definitions. — Unless otherwise noted in this chapter the definitions as set forth in section 22-2005, Idaho Code, are adopted by reference.

(1) “Environmental harm” means to cause significant adverse effects on uses of natural resources or on plants or animals.

(2) “Invasive species” means species not native to Idaho, including their seeds, eggs, spores, larvae or other biological material capable of propagation, that cause economic or environmental harm and are capable of spreading in the state. “Invasive species” does not include crops, improved forage grasses, domestic livestock, or other beneficial nonnative organisms. [I.C., § 22-1904, as added by 2008, ch. 387, § 1, p. 1063.]

STATUTORY NOTES

Prior Laws. — Former § 22-1904 was repealed. See Prior Laws, § 22-1901. ch. 387 declared an emergency. Approved April 9, 2008.

Effective Dates. — Section 2 of S.L. 2008,

22-1905. Prohibited actions. — No person may import, export, purchase, sell, barter, distribute, propagate, transport or introduce an invasive species into or within the state of Idaho and no person may possess an invasive species, except:

(1) Under a permit issued by the director;

(2) When being transported to an appropriate state authority, or another destination as such authority may direct, in a sealed container for purposes of identifying the species or reporting the presence of the species;

(3) When being transported for disposal as part of an approved control activity under a permit issued pursuant to section 22-1906, Idaho Code;

(4) When the specimen has been lawfully acquired dead and, in the case of plant species, all seeds are removed or are otherwise rendered nonviable;

(5) In the form of herbaria or other preserved specimens, so long as such specimens are rendered nonviable; or

(6) As the director may otherwise prescribe by rule. [I.C., § 22-1905, as added by 2008, ch. 387, § 1, p. 1063.]

STATUTORY NOTES

Prior Laws. — Former § 22-1905 was repealed. See Prior Laws, § 22-1901.

ch. 387 declared an emergency. Approved April 9, 2008.

Effective Dates. — Section 2 of S.L. 2008,

22-1906. Duties of the department and director. — The department may prevent and control, by such means as shall be prescribed and provided by law, rule or by order of the department, all invasive species that may cause economic or environmental harm to the state. The director shall:

(1) After due investigation, report the detection of new invasive species within the state to the appropriate state and federal officials;

(2) Issue permits for the transport or possession of an invasive species into, within or through the state of Idaho. Permits shall include requirements to ensure the containment of that species, as may be prescribed in rule.

These duties shall not usurp existing provisions of the Idaho Code, programs that deal with invasive species issues, or the individual missions of any state agency or duplicate efforts existing upon passage of this act. [I.C., § 22-1906, as added by 2008, ch. 387, § 1, p. 1063.]

STATUTORY NOTES

Prior Laws. — Former § 22-1906 was repealed. See Prior Laws, § 22-1901.

Compiler's Notes. — The term "this act", at the end of the section, refers to S.L. 2008, ch. 387, which is codified as §§ 22-1901 to 22-1919.

Effective Dates. — Section 2 of S.L. 2008, ch. 387 declared an emergency. Approved April 9, 2008.

22-1907. Rules and orders. — The director is hereby authorized to promulgate rules necessary for the efficient enforcement of the provisions of this chapter. Rulemaking authority shall include, but not be limited to, the determination of which species are invasive and the establishment of procedures for testing, sampling, inspection, certification, permitting, compliance verification and recordkeeping. The director may by written order designate a species as invasive until such time as it may be added to the official rules of the department. [I.C., § 22-1907, as added by 2008, ch. 387, § 1, p. 1064.]

STATUTORY NOTES

Prior Laws. — Former § 22-1907 was repealed. See Prior Laws, § 22-1901.

Effective Dates. — Section 2 of S.L. 2008,

ch. 387 declared an emergency. Approved April 9, 2008.

22-1908. Authority to conduct inspections. — (1) In order to accomplish the purposes of this chapter, the director may enter upon and inspect any public or private premises, lands, bodies of water, or means of conveyance, or article of any person within this state, for the purpose of inspecting, surveying, treating, controlling, collecting samples, or destroying any invasive species.

(2) The director may establish check stations at points of entry to the state, or other facilities and sites throughout the state, as necessary to carry out the provisions of this chapter. [I.C., § 22-1908, as added by 2008, ch. 387, § 1, p. 1064.]

STATUTORY NOTES

Prior Laws. — Former § 22-1908 was repealed. See Prior Laws, § 22-1901. ch. 387 declared an emergency. Approved April 9, 2008.

Effective Dates. — Section 2 of S.L. 2008,

22-1909. Disposition of invasive species. — The director is authorized to seize, decontaminate or destroy any invasive species found in this state from public or private ownership or control as necessary to carry out the provisions of this chapter. [I.C., § 22-1909, as added by 2008, ch. 387, § 1, p. 1064.]

STATUTORY NOTES

Prior Laws. — Former § 22-1909 was repealed. See Prior Laws, § 22-1901. ch. 387 declared an emergency. Approved April 9, 2008.

Effective Dates. — Section 2 of S.L. 2008,

22-1910. Hold order. — The director may issue hold orders to take prompt regulatory action in invasive species emergencies on any article, commodity, vehicle or other means of transportation entering this state in violation of this chapter or rules promulgated hereunder. [I.C., § 22-1910, as added by 2008, ch. 387, § 1, p. 1064.]

STATUTORY NOTES

Prior Laws. — Former § 22-1910 was repealed. See Prior Laws, § 22-1901. ch. 387 declared an emergency. Approved April 9, 2008.

Effective Dates. — Section 2 of S.L. 2008,

22-1911. Invasive species fund. — There is hereby established in the state treasury an invasive species fund.

(1) The fund shall receive such appropriations as deemed necessary by the governor and the legislature to accomplish the goals of this chapter. The fund shall also receive moneys from the collection of reasonable fees for permits or as otherwise required by this chapter or rules promulgated hereunder. The fund may also receive, at the discretion of the director, moneys from any other lawful source including, without limitation, fees, penalties, fines, gifts, grants, legacies of money, property, securities or other assets, or any other source, public or private.

(2) Moneys in the invasive species fund are subject to appropriation for the purposes of this chapter. The fund shall be used to support activities

related to the prevention, detection, control and management of invasive species in Idaho.

(3) All interest or other income accruing from moneys deposited to the fund shall be redeposited and accrue to the fund. Any unexpended balance left in the fund at the end of any fiscal year shall carry forward without reduction to the following fiscal year. [I.C., § 22-1911, as added by 2008, ch. 387, § 1, p. 1064.]

STATUTORY NOTES

Prior Laws. — Former § 22-1911 was repealed. See Prior Laws, § 22-1901. ch. 387 declared an emergency. Approved April 9, 2008.

Effective Dates. — Section 2 of S.L. 2008,

22-1912. Control and eradication costs — Deficiency warrants — Cooperation with other entities and citizens. — Whenever the director determines that there exists the threat of an infestation of an invasive species on state-owned land or water, private, forested, range or agricultural land or water, and that the infestation is of such a character as to be a menace to state, private, range, forest or agricultural land or water, the director shall cause the infestation to be controlled and eradicated, using such moneys as have been appropriated or may hereafter be made available for such purposes. Provided however, that whenever the cost of control and eradication exceeds the moneys appropriated or otherwise available for that purpose, the state board of examiners may authorize the issuance of deficiency warrants against the general fund for up to five million dollars (\$5,000,000) in any one (1) year for such control and eradication. Control and eradication costs may include, but are not limited to, costs for survey, detection, inspection, enforcement, diagnosis, treatment and disposal of infected or infested materials, cleaning and disinfecting of infected premises or vessels and indemnity paid to owners for infected or infested materials destroyed by order of the director. The director, in executing the provisions of this chapter insofar as it relates to control and eradication, shall have the authority to cooperate with federal, state, county and municipal agencies and private citizens in control and eradication efforts; provided, that in the case of joint federal/state programs, state moneys shall only be used to pay the state's share of the cost of the control and eradication efforts. Such moneys for which the state shall thus become liable shall be paid as a part of the expenses of the Idaho state department of agriculture out of appropriations that shall be made by the legislature for that purpose from the general fund of the state. In all appropriations hereafter made for expenses of the department, account shall be taken of and provision made for this item of expense. [I.C., § 22-1912, as added by 2008, ch. 387, § 1, p. 1065.]

STATUTORY NOTES

Prior Laws. — Former § 22-1912 was repealed. See Prior Laws, § 22-1901. ch. 387 declared an emergency. Approved April 9, 2008.

Effective Dates. — Section 2 of S.L. 2008,

22-1913. Penalties for violations. — (1) Any person who knowingly violates any provision of this chapter, or of the rules promulgated hereunder for carrying out the provisions of this chapter, or who fails or refuses to comply with any requirements herein specified, or who interferes with the department, its agents, designees or employees, in the execution, or on account of the execution of its or their duties under this chapter or rules promulgated hereunder, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than three thousand dollars (\$3,000) or be imprisoned in a county jail for not more than twelve (12) months or be subject to both such fine and imprisonment.

(2) Any person who violates or fails to comply with any of the provisions of this chapter or any rules promulgated hereunder may be assessed a civil penalty by the department or its duly authorized agent of not more than ten thousand dollars (\$10,000) for each offense and shall be liable for reasonable attorney's fees.

(a) Assessment of a civil penalty may be made in conjunction with any other department administrative action.

(b) No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act.

(c) If the department is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court.

(d) Any person against whom the department has assessed a civil penalty under the provisions of this section may, within twenty-eight (28) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred.

(e) All civil penalties collected pursuant to this section shall be remitted to the invasive species fund as authorized under section 22-1911, Idaho Code.

(3) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when he believes that the public interest will be best served by suitable warnings or other administrative action. [I.C., § 22-1913, as added by 2008, ch. 387, § 1, p. 1065.]

STATUTORY NOTES

Cross References. — Idaho administrative procedure act, § 67-5201 et seq.

Prior Laws. — Former § 22-1913 was repealed. See Prior Laws, § 22-1901.

Effective Dates. — Section 2 of S.L. 2008, ch. 387 declared an emergency. Approved April 9, 2008.

22-1914. Cooperative agreements. — (1) The department may enter into cooperative agreements with persons and entities including, but not limited to, civic groups and governmental agencies, to adopt and execute plans to detect and control areas infested with invasive species. Such cooperative agreements may include provisions for funding to implement agreements.

(2) If an invasive species occurs and cannot be adequately controlled by individual persons, owners, tenants or local units of government, the department may conduct the necessary control measures independently or on a cooperative basis with federal or other units of government.

(3) The department shall have the authority to delegate selected and clearly identified elements of its authorities and duties to another agency of the state with appropriate expertise or administrative capacity upon mutual agreement with that agency. The department is authorized to enter into memoranda of agreement with other state agencies to implement the delegations authorized in this subsection. Such delegation may include provisions of funding for implementation of the delegations. The department shall retain primary authority and responsibility for all requirements of this chapter unless otherwise directed herein. [I.C., § 22-1914, as added by 2008, ch. 387, § 1, p. 1066.]

STATUTORY NOTES

Prior Laws. — Former § 22-1914 was repealed. See Prior Laws, § 22-1901. ch. 387 declared an emergency. Approved April 9, 2008.

Effective Dates. — Section 2 of S.L. 2008,

22-1915. No effect on existing liability. — The enactment of this chapter does not terminate or modify any civil or criminal liability relating to plant pests which exists prior to the effective date of this chapter. [I.C., § 22-1915, as added by 2008, ch. 387, § 1, p. 1066.]

STATUTORY NOTES

Prior Laws. — Former § 22-1915 was repealed. See Prior Laws, § 22-1901. ch. 387 declared an emergency. Approved April 9, 2008.

Effective Dates. — Section 2 of S.L. 2008,

22-1916. Hold harmless. — Any state or federal agency or contractor, its officers, agents and employees implementing or enforcing the provisions of this chapter shall be held harmless against all claims arising from the good faith enforcement and implementation of the provisions of this chapter and rules promulgated hereunder, in accordance with the Idaho tort claims act, chapter 9, title 6, Idaho Code. [I.C., § 22-1916, as added by 2008, ch. 387, § 1, p. 1066.]

STATUTORY NOTES

Prior Laws. — Former § 22-1916 was repealed. See Prior Laws, § 22-1901. ch. 387 declared an emergency. Approved April 9, 2008.

Effective Dates. — Section 2 of S.L. 2008,

22-1917. Severability. — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act. [I.C., § 22-1917, as added by 2008, ch. 387, § 1, p. 1067.]

STATUTORY NOTES

Prior Laws. — Former § 22-1917 was repealed. See Prior Laws, § 22-1901.

Compiler's Notes. — For meaning of "this act", see Compiler's Notes, § 22-1906.

Effective Dates. — Section 2 of S.L. 2008, ch. 387 declared an emergency. Approved April 9, 2008.

CHAPTER 20

IDAHO PLANT PEST ACT OF 2002

SECTION.

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SECTION.

- eas and articles — Temporary rules.
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- 22-2020. Penalties for violations.
- 22-2021. Cooperation with other jurisdictions.
- 22-2022. Severability.
- 22-2023. No effect on existing liability.

22-2001. Title. — This chapter shall be known as the "Idaho Plant Pest Act of 2002." [I.C., § 22-2001, as added by 2002, ch. 89, § 2, p. 210.]

STATUTORY NOTES

Prior Laws. — Former § 20-2001, which comprised 1927, ch. 222, § 1, p. 321, I.C.A., § 22-1601; am. 1974, ch. 18, § 39, p. 364; am.

1991, ch. 30, § 2, p. 58; am. 1997, ch. 16, § 1, p. 21, was repealed by S.L. 2002, ch. 89, § 1, effective July 1, 2002.

22-2002. Administration. — This chapter shall be administered by the Idaho state department of agriculture. [I.C., § 22-2002, as added by 2002, ch. 89, § 2, p. 210.]

STATUTORY NOTES

Prior Laws. — Former § 20-2002, which comprised 1927, ch. 222, § 2, p. 321; I.C.A., § 22-1602; am. 1974, ch. 18, § 40, p. 364; am.

1997, ch. 16, § 2, p. 21, was repealed by S.L. 2002, ch. 89, § 1, effective July 1, 2002.

22-2003. Statement of purpose. — The purpose of this chapter is to prevent the introduction and subsequent dissemination of plant pests into Idaho through the movement of nursery stock and other plants and plant products. This chapter provides for the regulation of plant material and

plant pests moving into Idaho and establishes provisions under which such plant material and products may legally enter the state. This chapter also establishes provisions for the establishment of interstate and intrastate quarantines to restrict the movement of nursery stock, plant pests and plant products. [I.C., § 22-2003, as added by 2002, ch. 89, § 2, p. 210.]

STATUTORY NOTES

Prior Laws. — Former § 22-2003, which comprised 1927, ch. 222, § 3, p. 321; I.C.A., § 22-1603; am. 1997, ch. 16, § 3, p. 21, was repealed by S.L. 2002, ch. 89, § 1, effective July 1, 2002.

22-2004. Duties of the department. — The department may control and prevent, by such means as shall be prescribed and provided by law, rule, or by order of the department, all contagious, infectious and plant pests destructive to the state's agricultural, forestry or horticultural interests or to the state's general environmental quality. [I.C., § 22-2004, as added by 2002, ch. 89, § 2, p. 210.]

STATUTORY NOTES

Prior Laws. — Former § 22-2004, which comprised 1927, ch. 222, § 4, p. 321; I.C.A., § 22-1604; am. 1997, ch. 16, § 4, p. 21; am. 2001, ch. 148, § 1, p. 524, was repealed by S.L. 2002, ch. 89, § 1, effective July 1, 2002.

22-2005. Definitions. — When used in this chapter:

(1) "Acceptable level" means the probable level of harm that is so low that the imposition of phytosanitary requirements is not required; or the probable level of harm that the trade partners agree to achieve through or by the imposition of pest risk mitigation measures or strategies and accept for continued trade when confirmed by phytosanitary certification of specified host commodities.

(2) "Agent" means any person who on behalf of any other person receives on consignment, contracts for, or solicits for sale on commission, any plant product from a producer of such product, or who negotiates the consignment or purchase of any plant product on behalf of any other person.

(3) "Agricultural commodities" means plant products including any horticultural product.

(4) "Agriculture" means the production of plants.

(5) "Appliance" means any box, tray, container, ladder, tent vehicle, implement or other article which is, or may be, used in connection with the growing, harvesting, handling or transportation of any agricultural commodity.

(6) "Area" means any political division or subdivision or any officially defined area including adjacent parts of contiguous political divisions or subdivisions. Political divisions include nations and states or provinces within nations and states. Political subdivisions include counties, parishes and cities or municipalities. Officially defined areas also may include any other clearly defined and identifiable area including a specific property or facility.

(7) "Certificate" means a document authorized or prepared by a duly authorized federal or state regulatory official that affirms, declares or verifies that an article, nursery stock, plant product, shipment or any other officially regulated article meets phytosanitary, quarantine, nursery inspection, pest freedom, plant registration or certification, or other set of legal requirements. Such documents are known by their purpose of issuance: phytosanitary certificate, for the purpose of verifying compliance with phytosanitary or quarantine requirements; nursery stock certificate, for the purpose of verifying compliance with nursery inspection and pest freedom standards; registration or certification tags and seals, for the purpose of verifying compliance with registration or certification requirements.

(8) "Certification" means the official act of affirming, declaring or verifying compliance with phytosanitary, quarantine, nursery inspection, pest freedom, plant registration or any other set of legal requirements.

(9) "Compliance agreement" means any written agreement between a person and a duly authorized regulatory agency to achieve compliance with any set of requirements being enforced by the agency.

(10) "Control" means abatement, suppression, containment or eradication of a pest population.

(11) "Control order" means a written directive from the director requiring the control of a pest.

(12) "Conveyance" means a method of transportation.

(13) "Crop management area" means that area in which certain specified crop management practices are required.

(14) "Crop seed" means the seed or seedlike fruit of grain, beans, flax, beets, onions or any other crop whether or not it is intended for planting purposes.

(15) "Department" means the Idaho state department of agriculture.

(16) "Director" means the director of the Idaho state department of agriculture or his duly authorized representative.

(17) "Economic impacts" means significant damage or harm in terms of well documented:

(a) Plant or crop destruction or injury;

(b) Increased cultural or pest control costs;

(c) Disruption of existing pest control strategies such as biological control, integrated pest management, sustainable agriculture or forestry, and cropping patterns or loss of a high value crop without replacement by an equally valuable and marketable crop;

(d) Social adversities such as interference with home or urban gardening, human health, worker safety, food safety or jobs; or

(e) Environmental quality including added pesticide use, scenic and watershed damage, destruction of ecosystems and food chain interference.

(18) "Economically unacceptable impact" means that level of adverse economic impact which is identified and defined for plants for planting by a duly authorized federal or state plant protection organization.

(19) "Endangered area" means continent, region, country, state, county, province, municipality or any other delineated political or otherwise lawfully constituted geographic area which has been officially identified for protection from injurious pests not already present.

(20) "Eradication" means elimination of a pest based on absence determined by a negative, mutually agreed upon verification survey for the target pest.

(21) "Farm product" includes, but is not limited to, every agricultural, horticultural, viticultural, apicultural, floricultural and vegetable product, including honey bees.

(22) "Free from" means that either a valid detection survey has been performed or there is no published record showing that a specific pest is present; or that the article, nursery stock, plant, plant product or any other regulated article has been visually inspected or tested in accordance with specified requirements and that no live life stage of the regulated pest(s) was found.

(23) "Grain" means any crop seed intended for human or animal consumption.

(24) "Hold order or stop sale" means any written directive issued by the director to a person who owns or controls any appliance, article, nursery stock, plant, plant product or any other article that has been determined to be, or likely to be, infested with regulated pest(s) or otherwise not in compliance with this chapter or rules promulgated hereunder, prohibiting movement from one location to another, except as otherwise prescribed in the directive.

(25) "Host" means any appliance, article, commodity, nursery stock, plant, plant product or any other item which may or may not be capable of transporting a pest from one place to another.

(26) "Infected" means a plant that has been determined by the department to be contaminated with an infectious, transmissible, or contagious plant pest, or so exposed to the aforementioned that contamination can reasonably be expected to exist. This includes disease conditions, regardless of their mode of transmission, or any disorder of plants which manifest symptoms which, after investigation, are determined by a federal or state plant protection organization to be characteristic of an infectious, transmissible or contagious disease.

(27) "Infested" means a plant that has been determined by the department to be contaminated by a plant pest, or so exposed to the aforementioned that contamination can reasonably be expected to exist.

(28) "Investigator" means any person duly authorized by the director to perform any required regulatory activity.

(29) "Limited distribution" means a pest known to occur in the state, but with a limited distribution to a single small geographic area or a few small geographic areas which are widely separated within the state.

(30) "Management area" means that area in which certain specified crop management practices are required.

(31) "Mark" means, for purposes of identification or separation, the department may affix a conspicuous official indicator to, on, around or near, plants or plant material known, or suspected to be, infected or infested with a plant pest. This includes, but is not limited to: paint, markers, tags, seals, stickers, tape, signs or placards.

(32) "Move" means to ship, offer for shipment, receive for transport, carry or, in any manner whatsoever, relocate a regulated article from one place to another.

(33) "Nursery stock" means all plants or any part thereof, such as aquatic or herbaceous plants, bulbs, sod, buds, corms, culms, roots, scions, grafts, cuttings, fruit pits, seeds of fruits, forest and ornamental trees and shrubs, berry plants, and all trees, shrubs, vines, and plants collected in the wild that are grown or kept for propagation or sale. The term does not include field and forage crops, seeds of grasses, cereal grains, vegetable crops and flower crops, bulbs and tubers of vegetable crops, vegetable crops, vegetables or fruit used for food or feed, cut trees or cut flowers unless stems or other portions thereof are intended for propagation.

(34) "Official" means authorized, implemented and directed, or performed by a government plant protection organization.

(35) "Officially controlled" means the conduct, by an official government plant protection organization, of eradication or intensive suppression activity including various treatments, quarantine and other measures with the goal of eliminating an isolated infestation or prevention of further spread within the endangered area. It does not include private general agricultural, urban forestry or home garden pest control measures conducted by persons against pests permanently established in an endangered area.

(36) "Owner" means the person, with the legal right of possession, proprietorship of, or responsibility for the property or place where any of the regulated articles as defined in this chapter are to be found, or the person who is in possession of, in proprietorship of, or has responsibility for the regulated articles.

(37) "Pathway" means any natural or artificial means or avenue that allows for the movement of a pest from one area to another.

(38) "Permit" means any official document that allows the movement of any regulated article from one location to another in accordance with specified conditions or requirements and for a specified purpose.

(39) "Person" means, but is not limited to, any individual, partnership, corporation, company, firm, society, association, organization, government agency or any other entity.

(40) "Pest" means any insect, snail, rodent, nematode, fungus, virus, bacterium, microorganism, mycoplasma-like organism, weed, plant, or parasitic higher plant and any other pest as defined by rule or any of the following that is known to cause damage or harm to agriculture or the environment:

(a) Any infectious, transmissible or contagious disease of any plant; or any disorder of any plant which manifests symptoms or behavior which, after investigation and hearing, is found and determined by a duly constituted federal, state or local plant protection organization, to be characteristic of an infectious, transmissible or contagious disease;

(b) Any form of invertebrate animal life;

(c) Any form of plant life.

(41) "Pest-free area" means an area kept free from a specific pest.

(42) "Pest risk analysis" means characterizing the nature of pest hazard or harm; identifying the degree of probability or likelihood of harm;

analyzing the degree to which risk mitigation measures or strategies can reduce the probability of harm to an acceptable level; and recommending pest risk mitigation measures or strategies.

(43) "Phytosanitary" means plant health.

(44) "Phytosanitary measures" means any growing season or postharvest treatment or any other method (tactic) or strategy (combination of methods or tactics) specified in a quarantine to reduce pest risk to an acceptable level.

(45) "Plant" means any part of a plant, tree, aquatic plant, plant product, plant material, shrub, vine, fruit, rhizome, sod, vegetable, seed, bulb, stolon, tuber, corm, pip, cutting, scion, bud, graft or fruit pit, also including:

(a) Agricultural commodities;

(b) Noncultivated or feral plants gathered from the environment;

(c) Plants produced by tissue culture, cloning or from stem cell cultures or other prepared media culture.

(46) "Plants for planting" means any part of a plant that is intended to be planted.

(47) "Preclearance" means an agreement between quarantine officials of exporting and importing states or countries to pass plants through quarantine by allowing the exporting state or country to inspect the plants preshipment, rather than the importing state or country inspecting the shipment upon arrival.

(48) "Public nuisance" means any premises, plant, appliance, conveyance or article which is infected or infested with any plant pest that may cause significant damage or harm, or premises where any plant pest is found.

(49) "Quarantine" means a restriction imposed by a duly authorized plant regulatory agency whereby the production, movement or existence of plants, or any other article or material, or the normal activity of persons, is brought under regulation, in order that the introduction or spread of a pest may be prevented or limited, or in order that a pest already introduced may be controlled or eradicated, thereby reducing or avoiding losses that would otherwise occur through damage done by the pest or through continuing cost of control measures.

(50) "Quarantine pest" means a pest of economically unacceptable impact to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.

(51) "Registration" means the official recording of a growing location, person, plant, sales location or any other item or place as one that has met specified requirements and therefore eligible for a particular activity, operation or purpose.

(52) "Regulated article" means any item the movement of which is governed by a quarantine or any other rule.

(53) "Regulated nonquarantine pest" means a nonquarantine pest whose presence affects the intended use of plants with an economically unacceptable impact.

(54) "Regulated pest" means quarantine pest or regulated nonquarantine pest.

(55) "Regulated or restricted area" means a geographical area in which special restrictions on the management of certain plant materials are imposed.

(56) "Regulatory incident" means the detection of a pest under circumstances which indicate the absence of establishment.

(57) "Restrictive measure" means a phytosanitary measure allowing only specified actions that are subject to certain requirements.

(58) "Shipment" means anything which is, may be, or has been transported from one place to another.

(59) "Significant damage or harm" means that level of economic impact that results in damage, injury or loss that exceeds the cost of control for a particular crop.

(60) "State plant regulatory official" means the employee(s) designated to enforce the provisions of a state's plant pest laws, quarantines and rules.

(61) "State quarantine" means a rule promulgated pursuant to state authority that identifies a pest or pests and imposes requirements for certification of regulated articles as being in compliance with specified restrictions or requirements for pest freedom.

(62) "Suppressive area" means a plant pest infested area where phytosanitary measures are being applied to reduce the plant pest population and thereby limit the spread of the pest.

(63) "Survey" means the systematic search for pests in accordance with mutually agreed upon methods designed to assure confidence in their meaning and accuracy for pest prevention purposes such as control, verification of pest-free areas, identification of possible harm, evaluation of probability of harm, and taking appropriate actions to prevent predicted significant harm. Surveys may be performed for the purposes of detection, delimitation or verification.

(64) "Undesirable plant" means any plant species which is detrimental to the quality of the product of that crop, by competition, cross-pollination, or any other means to the production of the crop for which a crop management area was established. [I.C., § 22-2005, as added by 2002, ch. 89, § 2, p. 210.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

22-2006. Promulgation of rules — Collection and deposit of fees and penalties. — (1) The director is hereby authorized to promulgate rules:

(a) Necessary for the efficient enforcement of the provisions of this chapter including, but not limited to: setting of quarantine boundaries, requirements for importing and exporting plant materials, planting, testing, sampling, inspection, certification, compliance verification procedures, recordkeeping procedures, and setting of a schedule of fees for services performed by the department in the administration of this chapter.

(b) To implement and carry out the purposes of this chapter to control and prevent the spread of plant pests within the state and from within the state to points outside the state.

(c) To regulate nonquarantine species, exempt species and federally quarantined species.

(2) All revenues from fees and penalties collected as authorized under this chapter shall be deposited to the agricultural department inspection fund created pursuant to section 22-105 [22-104], Idaho Code. [I.C., § 22-2006, as added by 2002, ch. 89, § 2, p. 210.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion in subsection (2) was made by the compiler to correct the statutory citation.

22-2007. Authority to conduct inspections — Entry on lands. —

(1) The director may enter into each county of the state for the purpose of inspecting, examining and determining thereby the healthfulness and general condition of the environmental, horticultural, forestry and agricultural interests.

(2) In order to accomplish the purposes of this chapter, the director may enter upon and inspect any public or private premises, lands, or means of conveyance, or article of any person within this state, for the purpose of inspecting, surveying, treating, controlling or destroying any plant or plant pest. [I.C., § 22-2007, as added by 2002, ch. 89, § 2, p. 210.]

22-2008. Discovery of plant pests — Official marking of infested or infected articles — Reporting the detection of plant pests. —

(1) Upon knowledge of the existence of a regulated pest or a pest that may cause significant damage or harm within the state, the department is authorized to conspicuously mark all plants, materials and articles known or suspected to be infected or infested with the pest. The department shall notify the person, owner or the tenant in possession of the premises or area in question of the existence of the pest and of the prescribed control measures. The aforementioned person shall, within the prescribed time limit, implement the conditions of the department's hold order or stop sale or be subject to civil penalties.

(2) The state plant regulatory official shall immediately report the detection of new plant pests within the state to the director and to the U.S. department of agriculture. Other state plant regulatory officials shall be notified as deemed necessary. [I.C., § 22-2008, as added by 2002, ch. 89, § 2, p. 210.]

22-2009. Hold order or stop sale. — The director may issue hold orders or stop sales to take prompt regulatory action in plant pest emergencies on any plant, article, or commodity entering this state in violation of this chapter or rules promulgated hereunder. [I.C., § 22-2009, as added by 2002, ch. 89, § 2, p. 210.]

22-2010. Control orders — Control of nuisances — Liens and cost recovery. — (1) If upon any complaint or inspection, there is found any

pest injurious to plants, or an imminent potential threat of any pests injurious to any plants, the director shall notify the owner or the person in charge or in possession of such places, fields, plants or other articles. The director shall issue a control order requiring such owner or person to control said injurious pests or to take such steps as may be necessary to remove the imminent potential threat of pests within a reasonable time to be specified. The control order shall be served in person or in writing, or it may be served in the same manner as a summons in a civil action, on the owner or person owning or in charge or in possession of such infested places, rights-of-way, fields or plants.

(2) If the owner or person in charge of any property on which there are plants or other articles infested with any pest thereof, or any article known to be a host of a pest, after having been issued a control order to control such pests or articles, shall fail, neglect or refuse to do so, then all such property, plants and articles are declared to be a public nuisance and shall be proceeded against as such. When such nuisance shall exist on any property within the state, the department shall cause such nuisance to be controlled at once by disinfecting or destroying the infested articles or host material. The expense of such proceedings shall be paid for by the state pursuant to section 22-2019, Idaho Code, subject to the provisions of subsection (3) of this section.

(3) All sums so paid for carrying out the provisions of this section shall be a legal charge against such property and if not paid within thirty (30) days from the time when demand therefor is first made upon the owner of such property by the department controlling such nuisance, shall be certified by the said department to the tax collector of the county wherein the property is situated and thereafter shall constitute a lien upon such property and such sum shall be added by said tax collector to the general taxes assessed against said property which becomes due the next year thereafter and shall be collected by him in the same manner and with the same penalties as such other taxes. Nothing contained in this section shall be construed to require satisfaction of the obligation imposed hereby in whole or in part from the sale of property or to bar the application of any other or additional remedy otherwise available. Amounts collected under this subsection shall be paid into the state treasury and credited to the general fund. [I.C., § 22-2010, as added by 2002, ch. 89, § 2, p. 210.]

22-2011. Compensation for the loss or destruction of infested or infected plants, plant products or other articles. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which ch. 89, § 2, p. 210, was repealed by S.L. 2006, comprised I.C., § 22-2011, as added by 2002, ch. 197, § 1.

22-2012. Quarantines. — The director, by and with the approval of the governor, may, after investigations or hearings, establish, maintain and enforce quarantines as the director deems necessary to protect any and all

plants against infestation or infection by any plant pest, new to or not heretofore widely prevalent or distributed within or throughout the state of Idaho. Quarantine rules issued under this chapter shall be promulgated in accordance with chapter 52, title 67, Idaho Code. [I.C., § 22-2012, as added by 2002, ch. 89, § 2, p. 210.]

22-2013. Quarantine rules — Regulated areas and articles — Temporary rules. — The director may promulgate quarantine rules, whereby the production, movement or existence of plants, or any other article or material, or the normal activity of persons, is brought under rules, in order that the introduction or spread of a plant pest may be prevented or limited, or in order that a plant pest already introduced may be officially controlled, thereby reducing or avoiding an economic impact that would otherwise occur through damage done by the pest or through continuing cost of control measures.

(1) Federal quarantine. The department may enter into cooperative agreements with the U.S. department of agriculture, and other federal, state, city or county agencies to assist in the enforcement of federal quarantines. The department may establish a quarantine and promulgate a rule against a plant pest or an area not covered by a federal quarantine. The department may seize, destroy or require treatment of products moved from a federally regulated area if they were not moved in accordance with the federal quarantine rules or, if certified, they were found to be infested with the plant pest.

(2) State plant quarantines:

(a) State interior quarantine. The department may establish a quarantine against a plant pest that is not of quarantine significance to other states, to prevent the spread of the plant pest within its borders; or establish a quarantine against a plant pest of regional or national significance when no federal quarantine has been established.

(b) Parallel state interior quarantine. The department may establish a parallel state interior quarantine against a plant pest which is of limited distribution in the state and is the subject of a federal quarantine. The quarantine regulates intrastate movement between quarantined and nonquarantined areas of the state. This quarantine action is required if the federal quarantine is to apply only to the infested portion of the state.

(c) Uniform state quarantine. The department may establish a uniform state quarantine with other infested states which are parallel with respect to their basic quarantine requirements. The regulated area in the uniform state quarantine shall describe the area to be regulated. The quarantine shall include a reference to regulated areas of all the infested states under the uniform state quarantine. When a plant pest of regional or national significance occurs only in limited areas of the state and no federal quarantine is established, a state interior quarantine shall be established.

(d) Standard state exterior quarantine. The department may establish a standard state exterior quarantine if the plant pest is not established in the state but is established in other states and no federal quarantine has

been established. The department may require controls at origin or destination as are necessary to provide protection for Idaho industries, the public and the environment.

(3) Regulated areas. The regulated area to be described in quarantine rules may involve the entire state, portion of the state (areas) or a list of locations of infested properties:

(a) Regulated areas may be subdivided into suppressive and generally infested areas where it is desirable to augment control measures being applied in certain areas, and it is believed necessary to control movement into such areas from generally infested areas.

(b) Provisions in the quarantine rules may be made for adding to the regulated area any other area known to be infested, or which is found to be infested after establishment of the quarantine, when so declared by the director.

(c) When an infestation in a certain regulated area has been eliminated through the application of treatments, to the extent that movements of the regulated articles therefrom would no longer present a pest risk, the quarantine may be lifted. Provided, a hold order shall be issued to each owner of any remaining infested property in the aforementioned regulated area.

(4) Movement of regulated articles:

(a) Interstate shipments:

(i) Any regulated article that is prohibited interstate movement or is required to be certified, if moved interstate from an area regulated by a state or federal quarantine, shall be refused entry into the state.

(ii) The owner or carrier of regulated articles that are reportedly originating in nonregulated areas of a quarantined state must provide proof of origin of the regulated articles through an invoice, waybill or other shipping document.

(iii) If only a portion of a state is under a state or federal quarantine, the shipment will not be refused nor a certificate required if the article originates from a nonregulated area of the shipping state, unless the article is found to be infested or prohibited.

(b) Intrastate shipments:

(i) Certificates or permits are required for the movement of nonexempted regulated articles when:

1. Moving from a regulated area to any point outside thereof.
2. Moving from a generally infested area into a suppressive area.
3. Moving within a suppressive area where such control over this movement is desirable.

(ii) Certificates or permits should not be required for any regulated article originating outside of a regulated area moving to another nonregulated area, or moving through or reshipped from a regulated area when the point of origin of the article is clearly indicated on a waybill, bill of lading, shipper's invoice or other similar document accompanying the shipment, provided that shipments moving through or being reshipped from a regulated area must be safeguarded against infestation while within the regulated area in a manner satisfactory to an investigator.

(iii) Certificates should not be issued unless provisions of other applicable quarantines have been met and the regulated articles:

1. Originate in a noninfested portion of the regulated area and have not been exposed to infestation while within the regulated area; or
2. Have been examined and found to be free of infestation; or
3. Have been treated in accordance with procedures approved by the director; or
4. Have been grown, produced, manufactured, stored or handled in such a manner that, in the judgment of the investigator, no infestation would be transmitted thereby.

(iv) Limited permits may be issued to allow the movement of regulated articles to a specified destination for limited handling, utilization, or processing, provided the investigator has determined that such movement will not result in the spread of the pest and requirements of other quarantines have been met.

(v) Control over the movement of regulated articles from infested areas to noninfested areas within a regulated area may be provided for when such control over movement within a regulated area is desired to prevent the spread of plant pests. This provision usually will be applicable only when officially controlled treatments are being applied and would be handled through a direct written notice to the property owner concerned.

(vi) Compliance agreements should be required as a basis for the issuance of certificates or permits in bulk to industry for their issuance, and they are desirable to explain the main provisions of the quarantine for that particular concern.

(5) Temporary rules. The department may promulgate temporary rules pursuant to chapter 52, title 67, Idaho Code, in order to take immediate regulatory action to prevent the introduction or establishment of a plant pest. [I.C., § 22-2013, as added by 2002, ch. 89, § 2, p. 210.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

22-2014. Repeal of quarantines. — The director, by and with the approval of the governor, may repeal a quarantine when its purposes have been accomplished, or if the progress of events has clearly proved that the desired end is not possible to attain by the restrictions adopted. The quarantine shall be promptly reconsidered, either with a review or repeal or with intent of substituting other measures. Before any such repeal of a quarantine shall become effective, the same shall be approved by the governor and shall be signed in duplicate by him, and one (1) copy thereof shall be filed in the office of the secretary of state and the other in the office of the director. Quarantine rules issued under this chapter must be repealed in accordance with chapter 52, title 67, Idaho Code. [I.C., § 22-2014, as added by 2002, ch. 89, § 2, p. 210.]

22-2015. Listing of regulated nonquarantine pests and restrictions by rules. — The director may promulgate rules listing regulated nonquarantine pests and specify restrictions for specific plant pests with a specified economically unacceptable impact to Idaho agriculture. [I.C., § 22-2015, as added by 2002, ch. 89, § 2, p. 210.]

22-2016. Prohibited activity — Permits — Export certification and compliance agreements — Nonindigenous plant pest species. —

(1) The shipment, introduction into or release within this state of any plant pest, biocontrol agent, or genetically engineered plant or plant pest, or any other organism which may directly or indirectly affect the plant life of this state as an injurious pest, parasite or predator of other organisms, or any arthropod, is prohibited, except under permit issued by the department, or as exempted by rule.

(2) Permits:

(a) Permits for shipment of plant pests. No person may sell, offer for sale, move, convey, transport, deliver, ship or offer for shipment, any plant pest or biological control agent, without an application and permit to move live plant pests and noxious weeds, PPQ Form 526, supplements thereto, published by the U.S. department of agriculture, animal and plant health inspection service, plant protection and quarantine, or any publication revising or superseding the aforementioned, or its state equivalent. Permits may be issued only after the director determines that the proposed shipment or use will not create a hazard to the agricultural, forest or horticultural interests of this state or to the state's general environmental quality. The permit shall be affixed conspicuously and on the exterior of each shipping container, box, package, appliance, or accompany each shipping container, box, package or appliance, as the director requires.

(b) Biotechnology permits. The director may enter into cooperative agreements with the U.S. department of agriculture to provide oversight and regulation of genetically engineered plants or any organism that may be a plant pest. This includes reviewing U.S. department of agriculture biotechnology notifications and permits, inspection of facilities conducting agricultural biotechnology and field release sites.

(c) Interstate origin inspection and preclearance permits (compliance agreements). The director may issue permits for interstate origin and preclearance of quarantine articles based on pest risk mitigation tactics or strategies that can be enforced at the point of origin of the shipment. Interstate origin inspection programs can be developed to achieve compliance with quarantine restrictions, regulated nonquarantine pest restrictions and product quality standards.

(3) Export certification and compliance agreements. The director has the authority to enter into compliance agreements for the purpose of certifying articles as pest free for export certification.

(4) A nonindigenous plant pest species known or not known to occur in the state of Idaho may not be granted entry into the state unless issued a written permit by the director. Permits shall contain such conditions and

measures as the director may see fit to prevent the species from becoming established or further established within the state. [I.C., § 22-2016, as added by 2002, ch. 89, § 2, p. 210.]

22-2017. Crop management areas. — The legislature recognizes the fact that in order to produce crops that are free from plant pests, and to control such plant pests, it is frequently necessary to apply certain crop management practices over an area which may include several farms, orchards, nurseries or other crop producing entities. Such practices may include, but are not limited to, use of clean seed, destruction of infested or undesirable plants, use of chemicals and prohibiting introduction of host materials. The legislature further recognizes that it is in the public interest that the director be authorized to designate certain areas as crop management areas and to stipulate those practices which shall be followed in the management area insofar as they affect the particular crop.

(1) The director may provide for establishment of a crop management area after presentation of a petition signed by not less than twenty-five (25) registered electors residing within the confines of the proposed crop management area. The petitioners shall give the petition to the county clerk of the county or counties who shall examine the signatures and certify the number of valid signatures of electors residing within the confines of the proposed crop management area and transmit the petition to the director. The director may establish a crop management area within the boundaries specified in the petition.

(2) In instances where there are less than twenty-five (25) registered electors residing within the confines of the proposed crop management area, a majority of those registered electors must sign the petition in order for the petition to be considered by the director. The petitioner(s) of the proposed crop management area shall present the petition to the county clerk of the county of the proposed crop management area. The county clerk of the county shall examine the signatures presented by the petitioner(s) and shall certify that the number of valid signatures constitutes a majority of electors residing within the confines of the proposed crop management area. The county clerk of the county shall then transmit the petition to the director. The director may establish a crop management area within the boundaries specified in the petition.

(3) In instances where there are no registered electors residing within the confines of the proposed crop management area, the petitioner(s) of the proposed crop management area shall present the petition to the county clerk of the county of the proposed crop management area. The county clerk of the county shall notify the director in writing certifying that there are no registered electors residing in the proposed crop management area. The county clerk of the county shall then transmit the petition to the director. The director may establish a crop management area within the boundaries specified in the petition.

(4) The director may make and enforce rules to maintain the management area. Rules may include, but shall not be limited to:

(a) Specification of the kind and quality of seed or other propagative material which may be planted in the area;

- (b) Specification of treatments, chemical or otherwise, which shall be used to control pests or undesirable plants in the area;
- (c) Transportation of vegetative material into, within or out of the area;
- (d) Disposition of infested crops, undesirable plants or other material which may include destruction of the crops, plants or other material;
- (e) Disposition of vegetative material planted in violation of the rules.
- (5) Disposition of infested or violative material in a crop management area shall be at the expense of the owner thereof. [I.C., § 22-2017, as added by 2002, ch. 89, § 2, p. 210; am. 2004, ch. 186, § 1, p. 577.]

22-2018. Research and investigation of plant pest problems and control. — As deemed necessary, the director may fund research to prevent the introduction or spread of plant pests causing or having the potential to cause significant damage or harm in the state, and to investigate the feasibility of their control. [I.C., § 22-2018, as added by 2002, ch. 89, § 2, p. 210.]

22-2019. Infestations — Control and eradication costs — Deficiency warrants — Cooperation with other entities and citizens. — Whenever the director determines that there exists the threat of an infestation of grasshoppers, crickets or exotic plant pests on state-owned land, private, range or agricultural land, and that the infestation is of such a character as to be a menace to state, private, range or agricultural land, the director shall cause the infestation to be controlled and eradicated, using such funds as have been appropriated or may hereafter be made available for such purposes. Provided however, that whenever the cost of control and eradication exceeds the funds appropriated or otherwise available for that purpose, the state board of examiners may authorize the issuance of deficiency warrants against the general fund for up to five million dollars (\$5,000,000) in any one (1) year for such control and eradication. Control and eradication costs may include, but are not limited to, costs for survey, detection, inspection, diagnosis, treatment, and disposal of infected or infested plants and plant materials, cleaning and disinfecting of infected premises and indemnity paid to owners for infected or infested plants and plant materials destroyed by order of the director. The director, in executing the provisions of this chapter insofar as it relates to control and eradication, shall have the authority to cooperate with federal, state, county and municipal agencies and private citizens in control and eradication efforts; provided, that in the case of joint federal/state programs the state funds shall only be used to pay the state's share of the cost of the control and eradication efforts. Such moneys as the state shall thus become liable for shall be paid as a part of the expenses of the department of agriculture out of appropriations which shall be made by the legislature for that purpose from the general fund of the state. In all appropriations hereafter made for expenses of the department of agriculture, account shall be taken of and provision made for this item of expense. [I.C., § 22-2019, as added by 2006, ch. 197, § 3, p. 611.]

STATUTORY NOTES

Prior Laws. — Former § 22-2019, which comprised I.C., § 22-2019, as added by 2002, ch. 89, § 2, p. 210, was repealed by S.L. 2006, ch. 197, § 2.

22-2020. Penalties for violations. — (1) Any person who violates any provision of this chapter, or of the rules promulgated hereunder for carrying out the provisions of this chapter, or who fails or refuses to comply with any requirements herein specified, or who interferes with the department, its agents or employees, in the execution, or on account of the execution of its or their duties under this chapter or rules promulgated hereunder, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than three thousand dollars (\$3,000) or be imprisoned in a county jail for not more than twelve (12) months or be subject to both such fine and imprisonment.

(2) Any person who violates or fails to comply with any of the provisions of this chapter or any rules promulgated hereunder may be assessed a civil penalty by the department or its duly authorized agent of not more than ten thousand dollars (\$10,000) for each offense and shall be liable for reasonable attorney's fees.

(a) Assessment of a civil penalty may be made in conjunction with any other department administrative action.

(b) No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act.

(c) If the department is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court.

(d) Any person against whom the department has assessed a civil penalty under the provisions of this section may, within thirty (30) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred.

(e) All civil penalties collected pursuant to this section shall be remitted to the agricultural department inspection fund.

(3) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when he believes that the public interest will be best served by suitable warnings or other administrative action. [I.C., § 22-2020, as added by 2002, ch. 89, § 2, p. 210.]

STATUTORY NOTES

Cross References. — Agriculture department inspection account, § 22-104. Idaho administrative procedure act, § 67-5201 et seq.

22-2021. Cooperation with other jurisdictions. — (1) The department may enter into cooperative agreements with organizations including, but not limited to: persons, civic groups, or governmental agencies, to adopt and execute plans to detect and control areas infested or infected with plant

pests. Such cooperative agreements may include provisions of joint funding of any control treatment.

(2) If a plant pest occurs and cannot be adequately controlled by individual person(s), owner(s), tenant(s) or local units of government, the department may conduct the necessary control measures independently or on a cooperative basis with federal or other units of government. [I.C., § 22-2021, as added by 2002, ch. 89, § 2, p. 210.]

22-2022. Severability. — If any section, sentence, clause, phrase, or other portion of this chapter is for any reason held to be unconstitutional, the decision shall not affect the validity of the remaining portions thereof. [I.C., § 22-2022, as added by 2002, ch. 89, § 2, p. 210.]

22-2023. No effect on existing liability. — The enactment of this chapter does not terminate or modify any civil or criminal liability relating to plant pests which exists prior to the effective date of this chapter. [I.C., § 22-2023, as added by 2002, ch. 89, § 2, p. 210.]

STATUTORY NOTES

Compiler's Notes. — The "effective date of this chapter" is July 1, 2002.

CHAPTER 21

PLANT PEST CONTROL AND RESEARCH COMMISSION

SECTION.

22-2101 — 22-2108. [Repealed.]

22-2101 — 22-2108. Commission created — Membership — Powers of commission — "Pest" defined — Employment of assistants — Utilization of state agencies — Trustee for funds — Office and meetings — Expenditure of funds — Compensation and expenses — Agency for discharge of delegated duties — Deficiency warrants for pest control. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — The following sections were repealed by S.L. 2002, ch. 89, § 1, effective July 1, 2002:

22-2101, which comprised 1947, ch. 110, § 1, p. 226.

22-2102, which comprised 1947, ch. 110, § 2, p. 226; am. 1974, ch. 18, § 41, p. 364.

22-2103, which comprised 1947, ch. 110, § 3, p. 226.

22-2104, which comprised 1947, ch. 110, § 4, p. 226; am. 1974, ch. 18, § 42, p. 364.

22-2105, which comprised 1947, ch. 110, § 5, p. 226; am. 1994, ch. 180, § 17, p. 420.

22-2106, which comprised 1947, ch. 110, § 6, p. 226; am. 1980, ch. 247, § 9, p. 582.

22-2107, which comprised 1947, ch. 110, § 7, p. 226; am. 1974, ch. 18, § 43, p. 364.

22-2108, which comprised I.C., § 22-2108, as added by 1986, ch. 181, § 1, p. 478.

CHAPTER 22

SOIL AND PLANT AMENDMENTS

SECTION.

22-2201. Short title.
22-2202. Administration.
22-2203. Definitions.
22-2204. Authority to adopt rules.
22-2205. Products — Registration required.
22-2206. Submission of formulas.
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22-2208. Tonnage fee.
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22-2216. Publication of information.
22-2217. Stop-sale orders.
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22-2219. Remedies for violation.
22-2220. Disposition of moneys.
22-2221. Cooperation with other government agencies.
22-2222. No effect on existing liability.
22-2223. Not applicable to wholesale transactions.
22-2224. Severability.
22-2225. Statement of uniform interpretation and policy.
22-2226. Local legislation — Prohibition.

22-2201. Short title. — This act may be known and cited as the “Soil and Plant Amendment Act of 2001.” [I.C., § 22-2201, as added by 2001, ch. 250, § 3, p. 903.]

STATUTORY NOTES

Prior Laws. — Former § [22-2201] 22-1101, which compiled I.C., § [22-2201] 22-1101, as added by 1990, ch. 426, § 1, p. 1179, was repealed by S.L. 2001, ch. 250, § 1.

22-2202. Administration. — This chapter shall be administered by the Idaho department of agriculture. [I.C., § 22-2202, as added by 2001, ch. 250, § 3, p. 903.]

STATUTORY NOTES

Prior Laws. — Former § [22-2202] 22-1102, which comprised I.C., § [22-2202] 22-1102, as added by 1990, ch. 426, § 1, p. 1179, was repealed by S.L. 2001, ch. 250, § 1.

22-2203. Definitions. — As used in this chapter:

(1) “Aged” means exposed to weathering and/or natural decay, such that the original material is significantly altered.

(2) “Biosolid(s)” means a primary organic solid material produced by wastewater treatment processes that can be beneficially recycled for its plant nutrient content and soil amending characteristics, as regulated under the code of federal regulations, 40 CFR 503, as amended.

(3) “Brand” means the term, designation, trademark, product name or other specific designation under which individual soil amendments or plant amendments are offered for sale.

(4) “Bulk” means in nonpackaged form or in packages of one (1) cubic yard or more.

(5) “Bulk density” means dry weight per unit of volume.

(6) “Compost” means a biologically stable material derived from the composting process.

(7) "Composting" means the biological decomposition of organic matter. It is accomplished by mixing and piling in such a way to promote aerobic and/or anaerobic decay. The process inhibits pathogens, viable weed seeds and odors.

(8) "Coproduct" means a chemical substance produced for a commercial purpose during the manufacture, processing, use or disposal of another chemical substance or mixture.

(9) "Customer formula mix" means a soil amendment or plant amendment which is prepared to the specifications of the final purchaser.

(10) "Deficiency" means the amount of ingredient found by analysis to be less than that guaranteed, which may result from a lack of ingredients or lack of uniformity.

(11) "Department" means the Idaho department of agriculture.

(12) "Director" means the director of the Idaho department of agriculture or his duly authorized representative.

(13) "Distribute" means to import, consign, manufacture, produce, compound, mix, or blend soil amendments or plant amendments, or to offer for sale, sell, barter or otherwise supply soil amendments and plant amendments in this state.

(14) "Distributor" means any person who distributes.

(15) "Horticultural growing media" means any substance or mixture of substances which is promoted as or is intended to function as a growing medium for the managed growth of horticultural crops in containers and shall be considered a plant amendment for the purposes of this chapter.

(16) "Investigational allowance" means an allowance for variations inherent in the taking, preparation and analysis of an official sample of soil amendments or plant amendments.

(17) "Label" means the display of all written, printed or graphic matter upon the immediate container or statement accompanying a soil amendment or plant amendment.

(18) "Labeling" means all written, printed or graphic matter, upon or accompanying any soil amendment or plant amendment, or advertisements, brochures, posters, or television or radio announcements used in promoting the sale of the soil amendment or plant amendment.

(19) "Manipulation" means actively processed or treated in any manner.

(20) "Manufacture" means to compound, produce, granulate, mix, blend, repackage or otherwise alter the composition of soil amendment or plant amendment materials.

(21) "Micronutrients" means boron (B); chlorine (Cl); cobalt (Co); copper (Cu); iron (Fe); manganese (Mn); molybdenum (Mo); sodium (Na); and zinc (Zn).

(22) "Minimum percentage" means that percent of plant or soil amending ingredient that must be present in a product before the product will be accepted for registration when mentioned in any form or manner.

(23) "Mulch" means any organic or inorganic soil surface cover used to help retain moisture longer in the soil by retarding evaporation, to discourage weed growth, to help maintain a constant temperature by insulating the soil, to discourage runoff and soil erosion by shielding the soil surface from water abrasion or to promote water absorption and retention.

(24) "Official sample" means any sample of soil amendment or plant amendment taken by the director or his agent.

(25) "Organic" refers only to naturally occurring substances generally recognized as the hydrogen compounds of carbon and their derivatives.

(26) "Organic waste-derived material" means grass clippings, leaves, weeds, bark, plantings, prunings, and other vegetative wastes, wood wastes from logging and milling operations and food wastes. "Organic waste-derived material" does not include products that contain biosolids as defined in subsection (2) of this section.

(27) "Other ingredients" means the nonsoil amending or nonplant amending ingredients present in soil amendments or plant amendments.

(28) "Percent" or "percentage" means by weight.

(29) "Person" means individual, partnership, association, firm or corporation.

(30) "Plant amendment" means any natural or synthetic substance applied to plants or seeds which is intended to improve germination, growth, yield, product quality, reproduction, flavor or other desirable characteristics of plants except commercial fertilizers, soil amendments, limes, unmanipulated animal manure and vegetable organic waste-derived materials, pesticides, mulch and other materials which may be exempted by rule.

(31) "Processed" means deliberately treated or manipulated to modify or transform physical, chemical, or biological characteristics of the natural state of a substance.

(32) "Raw" means in the natural state, and not prepared, modified, processed or manipulated for use.

(33) "Registrant" means the person(s) who registers soil amendments or plant amendments under this chapter.

(34) "Soil amendment" means:

(a) Any substance which is intended to improve the physical, chemical or biological characteristics of the soil to favor plant growth; or

(b) Any material which is represented as having a primary function of enhancing, changing or modifying soil microorganism reproduction, activity or population, or material which is represented as having the primary function of forming or stabilizing soil aggregates in soil to which it is to be applied and thereby improving the resistance of the soil to the slaking action of water, increasing the soil's water and air permeability or infiltration, improving the resistance of the surface of the soil to crusting, improving ease of cultivation of soil, or otherwise favorably modifying the structural or physical properties of soil; and

(c) "Soil amendment" does not include commercial fertilizers, plant amendments, limes, gypsum, unmanipulated animal manures and vegetable organic waste-derived materials, pesticides, mulch and other material which may be exempted by rule of the department.

(35) "Ton" means a net weight of two thousand (2,000) pounds avoirdupois.

(36) "Verification of label claims" means explanatory information describing how the registrant determined the truthfulness and accuracy of the registrant's words or statements describing the product according to recognized standards.

(37) "Waste-derived soil amendment" or "waste-derived plant amendment" means any soil amendment or plant amendment that is derived from an industrial byproduct, coproduct or other material that would otherwise be disposed of if a market for reuse were not an option, but does not include any soil amendment or plant amendment derived from biosolids or biosolid products regulated under the code of federal regulations, 40 CFR 503, as amended.

(38) "Weight" means the weight of material as offered for sale.

(39) "Wood" means the hard fibrous material located beneath the bark of trees, which constitutes the greatest part of the stems of trees and shrubs.

When not specifically stated in this section or otherwise designated by the department in rule, the department will be guided by the definitions of general terms, fertilizer materials and soil and plant amendment materials as set forth in the official publication of the association of American plant food control officials (AAPFCO), or the Merck Index, published by Merck & Co., Inc. [I.C., § 22-2203, as added by 2001, ch. 250, § 3, p. 903.]

STATUTORY NOTES

Prior Laws. — Former § 22-2203, which comprised I.C., § [22-2203] 22-1103, as added by 1990, ch. 426, § 1, p. 1179; am. and redesign. 1991, ch. 184, § 1, p. 448, was repealed by S.L. 2001, ch. 250, § 2.

Compiler's Notes. — For the association

of American plant food control officials, referred to in the last paragraph, see <http://www.aapfco.org>.

For Merck Index, referred to in the last paragraph, see <http://www.merckbooks.com/minindex>.

22-2204. Authority to adopt rules. — The department shall administer, enforce, and carry out this chapter and may adopt rules necessary to carry out its purposes including, but not limited to, the proper use, handling, transportation, storage, display, distribution, sampling, records, analysis, form, minimum percentages, soil amending or plant amending ingredients, exempted materials, investigational allowances, definitions, labels, labeling, misbranding, mislabeling and disposal of soil amendments and plant amendments and their containers. The adoption of rules shall be subject to public hearing as prescribed by the Idaho administrative procedure act, chapter 52, title 67, Idaho Code. [I.C., § 22-2204, as added by 2001, ch. 250, § 3, p. 903.]

STATUTORY NOTES

Prior Laws. — Former § 22-2204, which comprised I.C., § [22-2204] 22-1104, as added by 1990, ch. 426, § 1, p. 1179; am. and

redesign. 1991, ch. 184, § 2, p. 448, was repealed by S.L. 2001, ch. 250, § 2.

22-2205. Products — Registration required. — (1) Each separately identifiable soil amendment or plant amendment product shall be registered before being distributed in this state. The application for registration shall be submitted to the department on a form furnished by the department, and shall be accompanied by a nonrefundable fee of one hundred dollars (\$100) per product and a label of each product, unless a current label is on file at the department. Companies planning to mix customer formula soil amend-

ments or plant amendments shall include the statement "customer formula mixes" under the "products" column on the registration application form. Upon approval by the department, a certificate of registration shall be furnished to the applicant.

(2) In determining whether a label statement of an ingredient is appropriate, the department may require the submission of a written statement describing the method of laboratory analysis used, the source of all ingredient material and any reference material relied on to support the label statement or guarantee of the ingredients.

(3) Upon receipt of a complete application for registration of a product, the department may test and analyze an official sample of the product to determine whether the contents of the official sample conform to the label. In his discretion, the director may also require an applicant for registration of a soil amendment or a plant amendment to submit any data concerning the efficacy or safety of the product for its intended use.

(4) Refusal to register, denial, suspension.

(a) If it appears to the director that composition of the soil amendment or plant amendment does not warrant the proposed claims for it, or if the soil amendment or plant amendment and its labeling or other material required to be submitted do not comply with this chapter or rules adopted under this chapter, the director shall notify the applicant of the manner in which the soil amendment or plant amendment labeling or other material required to be submitted fails to comply with this chapter so as to give the applicant an opportunity to make the necessary corrections. If the applicant does not make the required changes within ninety (90) days from the receipt of the notice, the director may refuse to register the soil amendment or plant amendment. The applicant may request a hearing as provided in the administrative procedure act, chapter 52, title 67, Idaho Code.

(b) When the director determines that a soil amendment or plant amendment or its labeling does not comply with this chapter or rules adopted under this chapter, or when necessary to prevent unreasonable adverse effects on the environment, the director may refuse to register or may suspend, revoke or modify the registration of the soil amendment or plant amendment in accordance with the provisions of the administrative procedure act, chapter 52, title 67, Idaho Code.

(5) Registrations are effective through the last day of the calendar year in which they are issued. If a registration is being renewed, the director may suspend the requirement that a soil amendment or plant amendment be analyzed if there is no material change in the label for the product.

(6) If the application for renewal of the soil amendment or plant amendment registration provided for in this section is not submitted before February 1 of any one (1) year, a penalty of ten dollars (\$10.00) per product shall be assessed and added to the original fee. The applicant shall pay the penalty before the renewal soil amendment or plant amendment registration may be issued.

(7) Any waste-derived soil amendment or waste-derived plant amendment distributed as a single ingredient product or blended with other soil

amendments or plant amendment ingredients must be identified as “waste-derived soil amendment or plant amendment” by the applicant in the application for registration.

(8) An applicant applying to register a waste-derived soil amendment or plant amendment shall state in the application the concentration of metals or metalloids including, but not limited to, arsenic (As), cadmium (Cd), mercury (Hg), lead (Pb), and selenium (Se). The applicant shall provide a laboratory report or other documentation verifying the levels of the metals or metalloids in the waste-derived soil amendment or plant amendment.

(9) A distributor is not required to register a soil amendment or plant amendment product that is already registered under this chapter, so long as the label remains unchanged. [I.C., § 22-2205, as added by 2001, ch. 250, § 3, p. 903.]

STATUTORY NOTES

Prior Laws. — Former § 22-2205, which comprised I.C., § [22-2205] 22-1105, as added by 1990, ch. 426, § 1, p. 1179; am. and redesign. 1991, ch. 184, § 3, p. 448, was repealed by S.L. 2001, ch. 205, § 2.

22-2206. Submission of formulas. — The department may require submission of the complete formula of any soil amendment or plant amendment and the source(s) of all ingredients if it is deemed necessary for the registration of any soil amendment or plant amendment product or administration of this chapter. Any formula so submitted is exempt from disclosure to the public pursuant to section 9-340D(1) or (2), Idaho Code. [I.C., § 22-2206, as added by 2001, ch. 250, § 3, p. 903.]

STATUTORY NOTES

Prior Laws. — Former § 22-2206, which comprised I.C., § [22-2206] 22-1106, as added by 1990, ch. 426, § 1, p. 1179; am. and redesign. 1991, ch. 184, § 4, p. 448, was repealed by S.L. 2001, ch. 250, § 2.

22-2207. Labeling information required. — (1) Soil amendment or plant amendment labels. The following information shall be considered the label and shall appear in a readable and conspicuous form on the face or display side of any container, or on the invoice if delivered in bulk, in which soil amendments or plant amendments are offered for sale:

- (a) Net weight or volume;
- (b) Brand name;
- (c) Content or guaranteed analysis; soil amending or plant amending ingredients:
 - “Name of ingredient” %
 - (identify and list all)
 - Total other ingredients %
- (d) Purpose of product;
- (e) Directions for application;
- (f) Name and mailing address of the registrant.

(g) Other information required by rule for the type of product being registered.

(2) No information or statement shall appear on any package, label or labeling which is false or misleading to the purchaser as to the use, analysis, type or composition of the soil amendment or plant amendment.

(3) The director may require verification of label claims made for any soil amendment or plant amendment. If no claims are made he may require proof of usefulness and value of the soil amendment or plant amendment. For evidence of proof, the director may rely on experimental data, evaluations or advice supplied from sources such as the director of the agricultural experiment station. The verification of label claims shall be relevant to the stated uses for which the product is intended. The director may accept or reject other sources of proof as additional evidence in evaluating soil amendments and plant amendments.

(4) Soil amending or plant amending ingredients may be listed or guaranteed on labels or labeling of soil amendments or plant amendments with the permission of the director. The director may allow a soil amending or plant amending ingredient to be listed or guaranteed on the label or labeling if satisfactory supportive data is provided to the director to substantiate the value and usefulness of the soil amending or plant amending ingredient. The director may rely on outside sources such as the director of the agricultural experiment station for assistance in evaluating the data submitted. When a soil amending or plant amending ingredient is permitted to be listed or guaranteed, it must be determinable by laboratory methods and is subject to inspection and analysis. The director may prescribe methods and procedures of inspection and analysis of the soil amending and plant amending ingredient. The director may stipulate by rule the quantities of soil amending or plant amending ingredient(s) required in a soil amendment or plant amendment.

(5) The director may allow labeling by volume rather than weight as provided in subsection (1)(a) of this section.

(6) Each delivery of a customer formula mix soil amendment or a plant amendment shall contain those ingredients specified by the purchaser, and those ingredients and the amounts of each shall be shown on the statement or invoice. A record of all invoices of customer formula mixes shall be kept by the registrant for a period of one (1) year and shall be available to the department upon request.

(7) Each delivery of a customer formula mix soil amendment or a plant amendment shall be accompanied by either a statement, invoice, delivery slip or label, containing the following information:

- (a) Net weight or volume;
- (b) The brand;
- (c) The name and address of the registrant or manufacturer, or both;
- (d) The name and address of the purchaser; and
- (e) The soil amending or plant amending ingredients and amounts. [I.C., § 22-2207, as added by 2001, ch. 250, § 3, p. 903.]

STATUTORY NOTES

Prior Laws. — Former § [22-2207] 22-1107, which comprised I.C., § [22-2207] 22-1107, as added by 1990, ch. 426, § 1, p. 1179, was repealed by S.L. 2001, ch. 250, § 1.

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

22-2208. Tonnage fee. — (1) The registrant of soil amendments or plant amendments distributed for sale or other remuneration in this state shall pay to the department a tonnage fee of fifteen cents (15¢) per ton, on a dry weight basis. For liquid formulations or ingredients, the tonnage fee shall be based on weight per gallon basis.

(2) Semiannual tonnage fee reporting periods shall be January 1 to June 30 and July 1 to December 31 of each year.

(3) Every registrant who distributes soil amendments or plant amendments in the state shall file with the department a semiannual statement for the reporting period setting forth the number of net tons of each soil amendment or plant amendment distributed in this state during the reporting period. The statement is due on or before thirty (30) days following the close of the filing period and upon filing the statement the registrant shall pay the tonnage fee at the rate stated in this section. If the tonnage report is not filed and the tonnage fees are not paid within thirty (30) days after the end of the specified filing period, a collection fee of ten percent (10%) of the amount due, or twenty-five dollars (\$25.00), whichever is greater, shall be assessed against the registrant and added to the amount due.

(4) The registrant is ultimately responsible for paying tonnage fees. When more than one (1) person is involved in the distribution of a soil amendment or plant amendment, the last person who has the soil amendment or plant amendment registered or who has distributed a soil amendment or plant amendment to a nonregistrant, dealer or consumer is responsible for reporting the tonnage and paying the tonnage fee, unless the report and payment are made by a prior distributor of the soil amendment or plant amendment.

(5) A minimum tonnage fee shall be fifteen dollars (\$15.00) per reporting period.

(6) Records of the number of net tons of each soil amendment or plant amendment distributed in this state shall be maintained for a period of five (5) years. The director may examine the records to verify the reported tonnage of plant amendments and soil amendments distributed in this state.

(7) Collected tonnage fees shall be used to pay the costs of inspection, sampling and analysis, and other expenses necessary for the administration of this chapter. [I.C., § 22-2208, as added by 2001, ch. 250, § 3, p. 903; am. 2008, ch. 132, § 1, p. 374.]

STATUTORY NOTES

Prior Laws. — Former § [22-2208] 22-1108, which comprised I.C., § [22-2208] 22-

1108, as added by 1990, ch. 426, § 1, p. 1179, was repealed by S.L. 2001, ch. 250, § 1.

Amendments. — The 2008 amendment, (\$15.00)” for “five dollars (\$5.00)” in subsection 132, substituted “fifteen dollars tion (5).

22-2209. Tonnage reports — Required. — (1) The registrant distributing or selling soil amendments or plant amendments to a nonregistrant or consumer shall furnish to the department a report showing the amounts in tons of each registered brand of plant amendment and soil amendment, and the form in which the plant amendment and soil amendment was distributed, dry or liquid. In the case of soil amendments or plant amendments distributed to an intermediate distributor, the registrant or distributor shall list the current name, address, telephone number, and amount in tons of each soil amendment and plant amendment product distributed to each intermediate distributor.

(2) Information furnished to the department under this section is exempt from disclosure under section 9-340D(1) or (2), Idaho Code, if the disclosure would divulge the operation of any person. [I.C., § 22-2209, as added by 2001, ch. 250, § 3, p. 903.]

STATUTORY NOTES

Prior Laws. — Former § [22-2209] 22- 1109, as added by 1990, ch. 426, § 1, p. 1179, 1109, which comprised I.C., § [22-2209] 22- was repealed by S.L. 2001, ch. 250, § 1.

22-2210. Inspection — Sampling — Analysis. — (1) The department shall inspect, sample, analyze and test soil amendments or plant amendments distributed within this state at a time and place and to an extent as it deems necessary to determine whether the soil amendments or plant amendments comply with this chapter. The department may stop any commercial vehicle transporting soil amendments or plant amendments on the public highways and direct it to the nearest scales approved by the department to check weights of soil amendments or plant amendments being delivered or to take samples of the product being transported. Also, the department may, upon presentation of proper identification, enter any distributor’s premises, including any vehicle of transport, at all reasonable times in order to have access to soil amendments or plant amendments and to records relating to their distribution.

(2) The methods of sampling and analysis shall be those adopted by the department from officially recognized sources, such as, but not limited to, the association of American plant food control officials (AAPFCO) and the association of official analytical chemists, international (AOAC).

(3) In determining for administrative purposes whether a soil amendment or plant amendment is deficient in any component, the department shall be guided solely by the official sample as defined in section 22-2203(24), Idaho Code, and obtained and analyzed as provided for in this section.

(4) When the inspection and analysis of an official sample has been made, the department shall forward the results of the analysis to the distributor and manufacturer, and to the purchaser upon written request. Upon written request and within thirty (30) days of the results of analysis, the depart-

ment shall furnish to the distributor and/or manufacturer a portion of the sample concerned.

(5) If the analyses of samples made by the department indicate deficiencies in the soil amendments or plant amendments examined, below guaranteed analysis and in excess of the tolerances specified in rules adopted under this chapter, the department shall immediately notify the manufacturer and/or distributor of the soil amendments or plant amendments of the results of the analyses. The manufacturer or distributor of the soil amendments or plant amendments may, upon written request, obtain from the department a portion of the sample(s) in question. If the manufacturer or distributor does not agree with the analyses of the department, he may request an umpire who shall be one (1) of a list of not less than three (3) public analysts recognized by the department to have the requisite ability in soil amendments, plant amendments or fertilizer analyses, who shall be named by the department. The umpire analyses shall be made at the expense of the manufacturer or distributor requesting the umpire analyses. If the umpire agrees more closely with the department, the figures of the department shall be considered correct. If the umpire agrees more closely with the figures of the manufacturer or distributor, then the figures of the manufacturer or distributor shall be considered correct.

(6) Analysis of an official sample by the department shall be accepted as prima facie evidence by any court of competent jurisdiction. [I.C., § 22-2210, as added by 2001, ch. 250, § 3, p. 903.]

STATUTORY NOTES

Prior Laws. — Former § [22-2210] 22-1110, which comprised I.C., § [22-2210] 22-1110, as added by 1990, ch. 426, § 1, p. 1179, was repealed by S.L. 2001, ch. 250, § 1.

Compiler's Notes. — For the association

of official analytical chemists, international, see <http://aoac.org>.

For the association of American plant food control officials, see <http://www.aapfco.org>.

22-2211. Short weight — Penalty. — If any soil amendment or plant amendment in the possession of the consumer is found by the director to be short in weight, the registrant of the soil amendment or plant amendment shall, within thirty (30) days after official notification from the department, submit to the department a penalty payment of three (3) times the value of the actual shortage. [I.C., § 22-2211, as added by 2001, ch. 250, § 3, p. 903.]

STATUTORY NOTES

Prior Laws. — Former § [22-2211] 22-1111, which comprised I.C., § [22-2211] 22-

111, as added by 1990, ch. 426, § 1, p. 1179, was repealed by S.L. 2001, ch. 250, § 1.

22-2212. Penalties for deficient analysis. — (1) If the analysis shows that any soil amendment or plant amendment falls short of the guaranteed analysis in any one (1) soil amending or plant amending ingredient or in total soil amending or plant amending ingredients, a penalty shall be assessed in favor of the department as follows:

(a) A penalty of three (3) times the value of the deficiency if the deficiency in any one (1) soil amending ingredient is more than:

(i) Twenty percent (20%) of the guarantee on any one (1) soil amendment or plant amendment in which the soil amending or plant amending ingredient is guaranteed up to and including twenty percent (20%).

(ii) Four percent (4%) under guarantee on any one (1) soil amendment or plant amendment in which the soil amending or plant amending ingredient is guaranteed twenty and one-tenth percent (20.1%) and above.

(b) A penalty of three (3) times the value of the total soil amending or plant amending ingredient deficiency shall be assessed when the total deficiency is more than two percent (2%) under the calculated total soil amending or plant amending ingredient guarantee.

(c) When a soil amendment or plant amendment is subject to penalties under both (a) and (b) above, only the larger penalty shall be assessed.

(2) All penalties assessed under this section shall be paid to the department within ninety (90) days after the date of notice from the director to the registrant. The department shall deposit the amount of the penalty into the commercial feed and fertilizer fund, as stipulated in section 22-2220, Idaho Code.

(3) Nothing contained in this section shall prevent any person from appealing to a court of competent jurisdiction for a judgment as to the justification for penalties imposed under subsection (1) of this section.

(4) The penalties payable in subsection (1) of this section do not limit the consumer's right to bring a civil action in damage against the registrant paying the civil penalties. [I.C., § 22-2212, as added by 2001, ch. 250, § 3, p. 903.]

STATUTORY NOTES

Prior Laws. — Former § [22-2212] 22-1112, as added by 1990, ch. 426, § 1, p. 1179, 1112, which comprised I.C., § [22-2212] 22-1112, was repealed by S.L. 2001, ch. 250, § 1.

22-2213. Assessment of penalties. — For the purpose of determining commercial values to be applied under this section, the director shall determine from the registrant's sales invoice the values charged for the plant amending or soil amending ingredients. If no invoice is available or if the invoice fails to provide sufficient information, the director may use prevailing market prices to determine values. The values so determined shall be used in determining and assessing penalties. [I.C., § 22-2213, as added by S.L. 2001, ch. 250, § 3, p. 903.]

STATUTORY NOTES

Prior Laws. — Former § 22-2213, which comprised I.C., § 22-2213, as added by 1991, ch. 184, § 5, p. 448, was repealed by S.L. 2001, ch. 250, § 2.

22-2214. Misbranding. — No person shall distribute a misbranded soil amendment or plant amendment in this state. A soil amendment or plant amendment is deemed to be misbranded if:

- (1) Its labeling is false or misleading in any material respect; or
- (2) It is distributed under the name or brand of another soil amendment or plant amendment, unless the distribution is proper under section 22-2205, Idaho Code; or
- (3) It is not labeled as required in section 22-2207, Idaho Code, and according to the rules of the department adopted under this chapter. The rules shall give due regard to the commonly accepted definitions and terms, as stated or provided in section 22-2203, Idaho Code; or
- (4) It purports to be or is represented as a soil amendment or plant amendment, or is represented as containing a soil amendment or plant amendment, unless the soil amendment or plant amendment conforms to the definitions of identity, if any, prescribed by rules of the department. In adopting the rules, the department shall give due regard to commonly accepted definitions and official terms, as stated or provided in section 22-2203, Idaho Code; or
- (5) It does not conform to the ingredient form, minimums, labeling and investigational allowances in the rules adopted by the department. [I.C., § 22-2214, as added by 2001, ch. 250, § 3, p. 903.]

22-2215. Adulteration. — No person shall distribute an adulterated soil or plant amendment. A soil amendment or plant amendment is deemed to be adulterated if:

- (1) It contains any deleterious or harmful substance, or organism in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil or water when applied in accordance with directions for use on the label; or, if adequate warning statements and directions for use, which may be necessary to protect plant life, animals, humans, aquatic life, soil or water, are not shown on the label; or
- (2) Its composition falls below or differs from that which it is purported to possess by its labeling; or
- (3) It contains unwanted crop seed or weed seed. [I.C., § 22-2215, as added by 2001, ch. 250, § 3, p. 903.]

22-2216. Publication of information. — The department shall publish the following information at least annually and in a form it deems proper: the total tonnage of soil amendments and plant amendments distributed; the total number of official samples analyzed and the number of deficient official samples analyzed; and any other information the department deems fit. [I.C., § 22-2216, as added by 2001, ch. 250, § 3, p. 903.]

22-2217. Stop-sale orders. — The director may issue and enforce a written “stop-sale, use or removal” order to the manufacturer, distributor, owner or custodian of any soil amendment or plant amendment, or any lot thereof, if he determines that:

- (1) A soil amendment or plant amendment is not properly registered or whose registration has been revoked under this chapter;
- (2) The proper tonnage fees or tonnage reports have not been submitted to the department pursuant to section 22-2208 or 22-2209, Idaho Code; or

(3) A soil amendment or plant amendment is misbranded or adulterated.

The order may require the person to whom it is directed to hold the soil amendment or plant amendment, or lot thereof, which is the subject of the order, at a designated place until the requirements of this chapter are satisfied and all costs and expenses reasonably incurred by the department in connection with the withdrawal are paid by or on behalf of the person to whom the order was directed. [I.C., § 22-2217, as added by 2001, ch. 250, § 3, p. 903.]

22-2218. Violations. — It is unlawful to:

- (1) Distribute a misbranded soil amendment or plant amendment;
- (2) Fail, refuse or neglect to place upon or attach to each container of distributed soil amendment or plant amendment a label containing the information required by this chapter;
- (3) Fail, refuse or neglect to deliver to a purchaser of bulk soil amendments or plant amendments, a statement containing the information required by this chapter;
- (4) Distribute a soil amendment or plant amendment which has not been registered with the department;
- (5) Distribute a soil amendment or plant amendment containing viable noxious weed seeds, as specified in section 22-2215(3), Idaho Code;
- (6) Distribute an adulterated soil amendment or plant amendment;
- (7) Distribute a soil amendment or plant amendment weighing less than that which it is purported to weigh;
- (8) Distribute a soil amendment or plant amendment different from the guaranteed analysis purported on the label;
- (9) Fail or refuse to provide, keep or maintain records and information as required by this chapter;
- (10) Fail to stop distribution of a soil amendment or plant amendment product under a stop-sale order as authorized under section 22-2217, Idaho Code; or
- (11) Fail to disclose to the director, when requested, sources of potentially deleterious components, which components shall be established by rule. [I.C., § 22-2218, as added by 2001, ch. 250, § 3, p. 903.]

22-2219. Remedies for violation. — (1) A person convicted of violating this chapter or the rules adopted under this chapter or who impedes, obstructs, hinders or otherwise prevents or attempts to prevent the director or a duly authorized agent from the performance of his duty in connection with this chapter, is guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500) for the first violation and not more than one thousand five hundred dollars (\$1,500) for a subsequent violation. In all prosecutions under this chapter involving the composition of a lot of a commercial soil and plant amendment product, a certified copy of the official analysis signed by the director or his duly authorized agent shall be accepted as prima facie evidence of the composition.

(2) A person who violates or fails to comply with this chapter or any rules adopted under this chapter may be assessed a civil penalty by the depart-

ment or its duly authorized agent of not more than ten thousand dollars (\$10,000) for each offense and shall be liable to the department for reasonable attorney's fees. The department may assess a civil penalty in conjunction with any other department administrative action. No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing under the Idaho administrative procedure act, chapter 52, title 67, Idaho Code. If the director is unable to collect the penalty or if a person fails to pay all or a set portion of the civil penalty as determined by the department, the department may recover the amount in an action in the appropriate district court. A person against whom the director has assessed a civil penalty under this section may, within thirty (30) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred.

(3) Nothing in this chapter requires the director or a duly authorized representative to report minor violations of this chapter for prosecution, or for the institution of seizure proceedings, when the director believes that the public interest will be best served by a suitable notice of warning in writing.

(4) A prosecuting attorney to whom any violation is reported shall, without delay, cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction. Before the director reports a violation for prosecution by a prosecuting attorney, the director shall give the person charged with the violation an opportunity to present his view to the director.

(5) The director may apply for and the court is authorized to grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule adopter [adopted] under this chapter notwithstanding the existence of other remedies of law. An injunction shall be issued without bond. [I.C., § 22-2219, as added by 2001, ch. 250, § 3, p. 903.]

STATUTORY NOTES

Compiler's Notes. — The bracketed word "adopted" in subsection (5) was inserted by the compiler.

22-2220. Disposition of moneys. — All moneys received by the director from the registration of soil amendments and plant amendments and from the payment of moneys derived from the registration and inspection fees charged on soil amendments and plant amendments, and moneys collected for violations of this chapter or rules adopted under this chapter, shall be paid into the state treasury and placed in a fund to be known as the "Commercial Feed and Fertilizer Fund." Moneys in the fund shall be used to carry out the purposes of this chapter. [I.C., § 22-2220, as added by 2001, ch. 250, § 3, p. 903.]

22-2221. Cooperation with other government agencies. — The director may cooperate with and enter into agreements with other government agencies, whether of this state, other states, or agencies of the federal

government, and with private associations, in order to carry out the purposes of this chapter. [I.C., § 22-2221, as added by 2001, ch. 250, § 3, p. 903.]

22-2222. No effect on existing liability. — The enactment of this chapter does not terminate or modify any civil or criminal liability which exists on July 1, 2001. [I.C., § 22-2222, as added by 2001, ch. 250, § 3, p. 903.]

22-2223. Not applicable to wholesale transactions. — This chapter does not restrict or preclude sales or exchanges of soil amendments or plant amendments to each other by importers, manufacturers or manipulators who mix soil amendment or plant amendment materials for sale or prevent the free and unrestricted shipments of soil amendments or plant amendments to manufacturers or manipulators who have registered their products as required in this chapter. [I.C., § 22-2223, as added by 2001, ch. 250, § 3, p. 903.]

22-2224. Severability. — If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not effect [affect] other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [I.C., § 22-2224, as added by 2001, ch. 250, § 3, p. 903.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion in this section was added by the compiler.

22-2225. Statement of uniform interpretation and policy. — When not otherwise stated in this chapter or rules adopted under this chapter, the statements of uniform interpretation and policy as adopted in the annual publication of the American plant food control officials shall guide the department when making the decisions in the areas covered by AAPFCO statements of uniform interpretation and policy. [I.C., § 22-2225, as added by 2001, ch. 250, § 3, p. 903.]

STATUTORY NOTES

Compiler's Notes. — For the association of American plant food control officials, see <http://www.aapfco.org>.

22-2226. Local legislation — Prohibition. — (1) No local government entity including, but not limited to, any city, county, township, or municipal corporation or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state of Idaho, shall:

- (a) Regulate the registration, packaging, labeling, sale, storage, distribution, use and application of soil and plant amendments;
 - (b) Adopt or continue in effect local legislation relating to the registration, packaging, labeling, sale, storage, distribution, use or application of soil and plant amendments.
- (2) Ordinances adopted by the local government entity in violation of this section are void and unenforceable.
- (3) The provisions of subsections (1) and (2) of this section shall not preempt county or city local zoning ordinances governing the physical location or siting of soil and plant amendment manufacturing, storage and sales facilities or protecting the quality of ground water or surface water in accordance with applicable state and federal law. [I.C., § 22-2226, as added by 2005, ch. 388, § 1, p. 1249.]

CHAPTER 23

NURSERIES AND FLORISTS

SECTION.

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- 22-2317. Knowingly selling, advertising, or displaying damaged, misrepresented, or mislabeled nursery or florist stock prohibited.
- 22-2318. Knowingly selling, moving, or storing infected or infested nursery or florist stock prohibited — Seizure.
- 22-2319. Stop sale order — Condemnation.
- 22-2320. Imported nursery or florist stock to bear certificate of origin — Contents.
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22-2301. Statement of purpose. — The legislature and the Idaho nursery and florist industry find and declare that the propagation and raising of nursery and florist stock is an agricultural pursuit that should be regulated and assisted by the department of agriculture to provide a high quality and pest free product to the citizens of Idaho and Idaho's external trading partners. A nursery and floral services program shall be maintained within the department for the purpose of carrying out and enforcing the provisions of this chapter. [I.C., § 22-2301, as added by 1998, ch. 89, § 1, p. 304.]

STATUTORY NOTES

Prior Laws. — Another former chapter 23 of Title 22, which comprised the following sections, was repealed by S.L. 1984, ch. 231, § 1:

- 22-2301. (1935, ch. 131, § 1, p. 306.)
- 22-2302. (1935, ch. 131, § 2, p. 306; am. 1939, ch. 230, § 1, p. 514; am. 1949, ch. 169, § 1, p. 365.)
- 22-2303. (1935, ch. 131, § 3, p. 306; am. 1957, ch. 115, § 1, p. 193.)
- 22-2304. (1935, ch. 131, § 4, p. 306; am. 1965, ch. 7, § 1, p. 8.)
- 22-2305. (1935, ch. 131, § 5, p. 306.)

- 22-2306. (1935, ch. 131, § 6, p. 306.)
- 22-2307. (1935, ch. 131, § 7, p. 306; am. 1949, ch. 169, § 2, p. 365.)
- 22-2308. (1935, ch. 131, § 8, p. 306; am. 1950 (E.S.), ch. 20, § 1, p. 31.)
- 22-2309. (1935, ch. 131, § 9, p. 306.)
- 22-2310. (1935, ch. 131, § 10, p. 306; am. 1949, ch. 169, § 3, p. 365.)
- 22-2311. (1935, ch. 131, § 11, p. 306.)
- 22-2312. (1935, ch. 131, § 12, p. 306.)

Compiler's Notes. — Former § 22-2301 was amended and redesignated as § 22-2302.

22-2302. Definition of terms. — For the purpose of this chapter:

(1) The singular and plural forms of any word or term in this chapter shall be interchangeable and equivalent within the meaning of this chapter.

(2) "Agent" means any person only soliciting orders in this state for the purchase or sale of nursery or florist stock for any principal who is not licensed under this chapter.

(3) "Dealer":

(a) Means any person who deals in, sells, handles, consigns, or accepts on consignment, imports, stores, displays or advertises nursery or florist stock which he has not grown.

(b) The term does not include persons whose business is located out-of-state and who import and sell such nursery or florist stock not grown in Idaho into this state and who only solicit such nursery or florist stock sales through salesmen or representatives or by mail or advertisement. Such a person to be exempt as a dealer must not own, lease, control, or maintain buildings, warehouses or any location or place in Idaho in which or through which such nursery or florist stock is stored, sold, offered for sale, or held for sale or delivered therefrom. The nursery or florist stock must be shipped direct from the out-of-state location or place of business to the grower, wholesaler, retailer, or ultimate consumer or user in Idaho.

(4) "Department" means the Idaho department of agriculture.

(5) "Director" means the director of the Idaho department of agriculture.

(6) "Florist stock" shall include all cut flowers, foliage and ferns, all potted plants or cuttings or bedding plants, and all flowering bulbs and rooted herbaceous plants used for ornamental or decorative purposes and all corms, whether grown in boxes, benches, pots, under glass or other artificial covering, or in the field or open ground or cuttings therefrom.

(7) "Grower" means any person who grows nursery stock.

(8) "Landscape contractor" shall be construed as applying to any person or persons engaged in landscaping property for which he, she, or they will furnish the plants, trees, or shrubs either from his, her, or their own nurseries or by purchase or on contract from other nurseries.

(9) "Not regularly engaged in the business" shall be construed to mean sales of nursery and/or florist stock incident to farming and gardening operations by persons who do not display such nursery and/or florist stock

for sale by use of signboards, placards, newspapers, radio, or other circulation medium.

(10) "Nursery and/or floral shop" shall be construed to mean any grounds, buildings, greenhouses, or premises either privately or publicly owned on or in which nursery stock or florist stock is propagated or grown for sale, either at the present or at some future time; or any grounds, buildings, greenhouses, vehicles, or premises on or in which nursery or florist stock is being stored, packed, or offered for sale.

(11) "Nursery stock" includes all botanically classified plants or any part thereof, such as aquatic or herbaceous plants, bulbs, sod, buds, corms, culms, roots, scions, grafts, cuttings, fruit pits, seeds of fruits, forest and ornamental trees, and shrubs, berry plants, and all trees, shrubs, vines, and plants collected in the wild that are grown or kept for propagation or sale. The term does not include field and forage crops, seeds of grasses, cereal grains, vegetable crops and flowers, bulbs and tubers of vegetable crops, vegetables or fruit used for food or feed, cut trees or cut flowers unless stems or other portions thereof are intended for propagation.

(12) "Nurseryman or florist" shall be construed to mean the person who owns, leases, manages, or is in charge of a nursery or flower shop or grows nursery or florist stock on shares or on contract.

(13) "Person" includes, but is not limited to, any individual, partnership, corporation, company, firm, society, association, organization, government agency, or any other entity.

(14) "Pest" means any biotic agent (any living agent capable of reproducing itself) or any of the following that is known to cause damage or harm to the production of agricultural crops or the environment:

(a) Any infectious, transmissible or contagious disease of any plant; or any disorder of any plant which manifests symptoms or behavior which, after investigation, is found and determined by a duly constituted federal, state or local pest prevention agency, to be characteristic of an infectious, transmissible or contagious disease.

(b) Any form of animal life.

(c) Any form of plant life, including noxious weeds as defined and listed in chapter 4, title 22, Idaho Code, and chapter 24, title 22, Idaho Code, and rules promulgated thereunder.

(15) "Sell" or "sale" means to offer, expose, or hold for sale, have for the purpose of sale, or to solicit orders for sale or to deliver, distribute, exchange, furnish, or supply.

(16) "Wholesale" means a sale in quantity to one who intends to resell; selling to retailers or contractors rather than consumers. [I.C., § 22-2301, as added by 1984, ch. 231, § 2, p. 552; am. and redesig. 1998, ch. 89, § 2, p. 304.]

STATUTORY NOTES

Prior Laws. — Another former § 22-2302 was repealed. See Prior Laws, § 22-2301.

Compiler's Notes. — This section was formerly compiled as § 22-2301.

Former § 22-2302 was amended and redesignated as § 22-2303.

The words enclosed in parentheses so appeared in the law as enacted.

22-2303. Duties of the department. — The department is authorized to:

(1) Inspect the nursery or florist stock of growers, dealers, and other persons and places of business provided for under sections 22-2301 through 22-2325, Idaho Code.

(2) Issue certificates and permits and check the license and licensing of persons affected by the provisions of sections 22-2302 and 22-2315, Idaho Code.

(3) Investigate violations of the provisions of sections 22-2301 through 22-2325, Idaho Code.

(4) Publish annually a list of all licensed nurseries, florists and agents. The annual list shall be distributed to the agricultural regulatory authority of each state and upon request to any licensed nurseries and florists within the state.

(5) Issue rules prescribing approved procedures and services as needed for the protection of the industry and to assure access to domestic and foreign markets. [I.C., § 22-2302, as added by 1984, ch. 231, § 2, p. 552; am. and redesisg. 1998, ch. 89, § 3, p. 304.]

STATUTORY NOTES

Prior Laws. — Another former § 22-2303 was repealed. See Prior Laws, § 22-2301.

Former § 22-2303 was amended and redesignated as § 22-2304.

Compiler's Notes. — This section was formerly compiled as § 22-2302.

22-2304. State nursery and florist advisory committee. — (1) In order to maintain close contact between the department and the nursery and florist industry, there is hereby created a state nursery and florist advisory committee which shall consist of six (6) members appointed by the director of the department of agriculture from a list provided by the Idaho nursery association [Idaho nursery and landscape association]. Said list will name at least two (2) persons as eligible for each vacancy on the committee. The term of each member shall be for three (3) years beginning on July 1 of the year of appointment. A member shall continue to serve until a successor is appointed and qualified. Vacancies in office shall be filled by appointment for the unexpired term.

(2) No member of the committee shall receive any salary or other compensation, but each member of the committee shall be reimbursed for each day spent in actual attendance in meetings of the committee at the same rate as is allowed state employees for travel expenses.

(3) The functions of the committee shall be to advise and counsel with the department in the administration of the provisions of this chapter.

(4) The committee shall meet at the call of the chairman or the director of the Idaho department of agriculture. A majority of the members present at any meeting shall constitute a quorum, and a majority vote of the quorum at any meeting shall constitute an official act of the committee.

(5) At the first meeting after July 1 in each year, the committee shall select a chairman. The dean of the school of agriculture at the University of Idaho and the director of the Idaho department of agriculture, or their representatives, shall be ex-officio members without the right to vote. [I.C.,

§ 22-2303, as added by 1984, ch. 231, § 2, p. 552; am. and redesisg. 1998, ch. 89, § 4, p. 304.]

STATUTORY NOTES

Prior Laws. — Another former § 22-2304 was repealed. See Prior Laws, § 22-2301.

Compiler's Notes. — This section was formerly compiled as § 22-2303.

Former § 22-2304 was amended and redesignated as § 22-2305.

The bracketed insertion in subsection (1) was added by the compiler to reflect the organizational name change, see <http://inlagrow.org>.

22-2305. License required — Schedule of fees. — (1) It shall be unlawful for any person to engage in, conduct, or carry on the business of propagating, growing, selling, dealing in, or importing into this state, for sale or distribution, any nursery or florist stock, or to engage in landscape designing, or to act as agent, salesman, or solicitor for any nurseryman, florist, landscape contractor, or dealer in nursery or florist stock without first obtaining a license to do so from the Idaho department of agriculture, and it shall be unlawful for any person to falsely represent that he is the agent, salesman, solicitor, or representative of any nurseryman, florist, landscape contractor, or dealer in nursery or florist stock.

(2) The provisions of this chapter shall not apply to the sale of plants, shrubs, scions, or florist stock by any person not regularly engaged in that business when said sales are only incident to the seller's farming or gardening operations and the total amount of gross annual sales by such seller does not exceed five hundred dollars (\$500). The department shall have the authority to inspect any nursery or florist stock in the possession of any person exempted by this subsection, when it has reason to believe that there may be a pest concern or quarantine violation.

(3) Every nurseryman or florist, landscape contractor, dealer, or importer of nursery or florist stock, or collector of native plants for sale shall make application for a license to the Idaho department of agriculture upon a form to be prescribed and furnished by said department, [and] pay to said department the license fee as provided in subsection (4) of this section. No license shall be issued until the applicant shall have paid the fee hereinafter provided.

(4) Nurseries required to be licensed shall consist of nurserymen, florists, dealers, landscape contractors, and importers of nursery or florist stock, and collectors of native plants for sale, and they shall pay a license fee of one hundred dollars (\$100) for their principal place of business. Nurseries with more than one (1) retail outlet shall identify the number and location of such additional outlets on the license application and pay an additional one hundred dollars (\$100) for each such additional outlet. The license number shall be prominently displayed in each outlet. Should the holder of a nursery license add one (1) or more outlets during the license year, the department must be notified and the one hundred dollar (\$100) surcharge for each such outlet paid immediately.

(5) Dealers shall keep accurate records of their sales and transactions involving nursery or florist stock and shall produce the same at any time when so required by the Idaho department of agriculture. At any hearing in

which the amount of license fee to be paid by any person is involved or any questions as to such person's claim for exemption from the provisions of this chapter, such person shall have the burden of proof to establish his claim.

(6) A license fee for an agent as defined in section 22-2302, Idaho Code, is twenty-five dollars (\$25.00) per annum for each principal that the agent represents. Agents soliciting sales only from persons licensed under this chapter shall be exempt from licensing fees.

(7) The fees for nursery or florist stock inspection and special services performed for persons not required to be licensed shall be as provided in rules promulgated by the director. [I.C., § 22-2304, as added by 1984, ch. 231, § 2, p. 552; am. and redesign. 1998, ch. 89, § 5, p. 304; am. 1999, ch. 83, § 1, p. 279; am. 2008, ch. 130, § 1, p. 364.]

STATUTORY NOTES

Prior Laws. — Another former § 22-2305 was repealed. See Prior Laws, § 22-2301.

Amendments. — The 2008 amendment, by ch. 130, substituted "one hundred dollars (\$100)" for "seventy-five dollars (\$75)" three times in subsection (4).

Compiler's Notes. — This section was formerly compiled as § 22-2304.

Former § 22-2305 was amended and redesignated as § 22-2306.

The bracketed insertion in subsection (3) was added by the compiler.

22-2306. Temporary nursery or florist sale license or location — Application fee — Condition. — (1) Upon payment of a fee of twenty-five dollars (\$25.00), a temporary nursery or florist sale license may be issued by the department for holding of a nursery stock sale conducted by or for the benefit of a duly registered nonprofit organization where such sale does not exceed seven (7) consecutive days in any calendar year.

(2) Application for a temporary nursery or florist license shall be made on a form furnished by the department, and shall be accompanied by the license fee as required for each sale.

(3) The department may prescribe the conditions of such temporary nursery and florist sale license, which conditions shall be stated in the license. Any such license may be revoked or suspended by the department for violation of any of the conditions stated therein.

(4) A licensed nursery or florist with a previously established place of business may conduct business from a temporary location, provided the location is not utilized for more than six (6) weeks in any calendar year. [I.C., § 22-2305, as added by 1984, ch. 231, § 2, p. 552; am. and redesign. 1998, ch. 89, § 6, p. 304.]

STATUTORY NOTES

Prior Laws. — Another former § 22-2306 was repealed. See Prior Laws, § 22-2301.

Compiler's Notes. — This section was formerly compiled as § 22-2305.

Former § 22-2306 was amended and redesignated as § 22-2307.

22-2307. Renewal of license. — (1) The fees for the renewal of the annual license required by this chapter shall be paid with the application for license renewal before January 1 of each year. Any license not renewed by

February 1 of each year shall be assessed an additional twenty-five dollar (\$25.00) fee along with the required license fee specified in section 22-2305, Idaho Code.

(2) Failure to pay the fees when due forfeits the right to operate as a grower, dealer, or agent.

(3) Any person who has been previously licensed to grow or sell nursery or florist stock and whose right to grow or sell has been forfeited shall not be issued a renewal license except upon written application to the department accompanied by a sum of money equal to the regular license fee as provided in section 22-2305, Idaho Code. [I.C., § 22-2306, as added by 1984, ch. 231, § 2, p. 552; am. and redesisg. 1998, ch. 89, § 7, p. 304.]

STATUTORY NOTES

Prior Laws. — Another former § 22-2307 was repealed. See Prior Laws, § 22-2301.

Former § 22-2307 was amended and redesignated as § 22-2308.

Compiler's Notes. — This section was formerly compiled as § 22-2306.

22-2308. Agent's license. — (1) No agent's license shall be issued or valid unless the agent's principal has given the department written authorization to issue the license.

(2) An agent's license shall be automatically suspended during any period when he is not acting as an agent or the principal has withdrawn or cancelled the authorization.

(3) If his license has not expired, an agent may revive his license by giving notice to the department that he is again acting as an agent. If the agent represents a principal other than the one who gave the written authorization to issue the license, subsection (1) of this section applies. [I.C., § 22-2307, as added by 1984, ch. 231, § 2, p. 552; am. and redesisg. 1998, ch. 89, § 8, p. 304.]

STATUTORY NOTES

Prior Laws. — Another former § 22-2308 was repealed. See Prior Laws, § 22-2301.

Former § 22-2308 was amended and redesignated as § 22-2309.

Compiler's Notes. — This section was formerly compiled as § 22-2307.

22-2309. License not transferable — Moving place of business. — (1) A license is personal to the applicant and may not be transferred. A new license is necessary if the business entity of the licensee is changed or if the membership of a partnership is changed, irrespective of whether or not the business name is changed.

(2) The license issued to a grower or dealer applies to the particular premises named in the license. However, if prior approval is obtained from the department, the place of business may be moved to other premises or locations without the necessity of relicensing. [I.C., § 22-2308, as added by 1984, ch. 231, § 2, p. 552; am. and redesisg. 1998, ch. 89, § 9, p. 304.]

STATUTORY NOTES

Prior Laws. — Another former § 22-2309 was repealed. See Prior Laws, § 22-2301.

Former § 22-2309 was amended and redesignated as § 22-2310.

Compiler's Notes. — This section was formerly compiled as § 22-2308.

22-2310. Suspension, revocation, or refusal of license. — The department may suspend, revoke, or refuse to issue or renew the license of any person when it is satisfied that:

(1) The applicant or licensee has been guilty of fraud, deception, or misrepresentation in the procurement of a license; or

(2) The licensee was guilty of violating any of the provisions of this chapter. [I.C., § 22-2309, as added by 1984, ch. 231, § 2, p. 552; am. and redesign. 1998, ch. 89, § 10, p. 304.]

STATUTORY NOTES

Prior Laws. — Another former § 22-2310 was repealed. See Prior Laws, § 22-2301.

Former § 22-2310 was amended and redesignated as § 22-2313.

Compiler's Notes. — This section was formerly compiled as § 22-2309.

22-2311. Advertisement of nursery or florist stock for sale. — No person may advertise in any media, any plant material covered under this chapter as being for sale without disclosing the person's company name or license number. [I.C., § 22-2311, as added by 1998, ch. 89, § 11, p. 304.]

STATUTORY NOTES

Prior Laws. — Another former § 22-2311 was repealed. See Prior Laws, § 22-2301.

Compiler's Notes. — Former § 22-2311 was amended and redesignated as § 22-2314.

22-2312. Wholesale sales. — No licensed nursery or florist may make wholesale sales of plant material for resale to an unlicensed nursery, florist, or landscape contractor. [I.C., § 22-2312, as added by 1998, ch. 89, § 12, p. 304.]

STATUTORY NOTES

Prior Laws. — Another former § 22-2312 was repealed. See Prior Laws, § 22-2301.

Compiler's Notes. — Former § 22-2312 was amended and redesignated as § 22-2315.

22-2313. Issuance of shipping permit numbers. — (1) The department may issue a shipping permit number to any licensee who requests or requires one.

(2) When authorized or required by the department, the shipping permit number shall accompany all shipments and deliveries of nursery or florist stock. Authorization for such use of a shipping permit number shall be renewed at least annually, subject to rules promulgated by the director. Use of a shipping permit number without proper authorization shall constitute

a violation of this chapter. [I.C., § 22-2310, as added by 1984, ch. 231, § 2, p. 552; am. and redesisg. 1998, ch. 89, § 13, p. 304.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 22-2310. Former § 22-2313 was amended and redesignated as § 22-2316.

22-2314. Inspection of licensed and unlicensed nurseries — Additional inspections and special services — Fees. — (1) The department shall inspect each licensed nursery and florist as often as the department considers necessary to determine and control pests.

(2) The department may make additional inspections and perform special services as needed in addition to those in paragraph (a) of this subsection including, but not limited to:

(a) Inspections for and issuance of phytosanitary certificates and other certificates required for entrance of nursery or florist stock into other states and foreign countries;

(b) Services performed to verify compliance with import regulations of other states and foreign countries; and

(c) Observing application of pesticides, including fumigants, on nursery or florist stock for phytosanitary purposes.

(3) The director shall maintain a schedule of fees for such additional inspections as may be required or requested. [I.C., § 22-2311, as added by 1984, ch. 231, § 2, p. 552; am. 1988, ch. 148, § 1, p. 269; am. and redesisg. 1998, ch. 89, § 14, p. 304.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 22-2311. Former § 22-2314 was amended and redesignated as § 22-2317.

22-2315. Substitution or transportation of uninspected nursery or florist stock prohibited. — No person shall:

(1) Substitute other nursery or florist stock for nursery or florist stock covered by an inspection certificate; or

(2) Transport or accept for transportation within the state of Idaho nursery or florist stock that does not carry the official inspection tag authorized by the department. [I.C., § 22-2312, as added by 1984, ch. 231, § 2, p. 552; am. and redesisg. 1998, ch. 89, § 15, p. 304.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 22-2312. Former § 22-2315 was amended and redesignated as § 22-2318.

22-2316. Misrepresentation of nursery stock by grower, dealer, or agent prohibited — Tags or labels required on fruit trees — Nursery or florist stock as horticultural product. — (1) No grower, dealer, or agent shall:

- (a) Sell nursery or florist stock representing it to be a name, age, or variety different from what the nursery or florist stock actually is; or
- (b) Represent that any nursery or florist stock is a new variety when, in fact, it is a standard variety and has been given a new name; or
- (c) Sell or present cormels as corms or bulblets as bulbs.

(2) In addition the grower, dealer, or agent shall attach to every bundle of fruit-bearing trees sold or shipped within this state a tag or label specifying the name of the variety of trees contained therein. If the bundle shall contain trees of different varieties, such label or tag shall be attached to each tree or group of trees of the same variety. [I.C., § 22-2313, as added by 1984, ch. 231, § 2, p. 552; am. and redesign. 1998, ch. 89, § 16, p. 304.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 22-2313. Former § 22-2316 was amended and redesignated as § 22-2319.

22-2317. Knowingly selling, advertising, or displaying damaged, misrepresented, or mislabeled nursery or florist stock prohibited. —

(1) No person shall knowingly offer to sell, advertise, or display nursery or florist stock:

- (a) That is dead, in a dying condition, seriously broken, desiccated, frozen or damaged by freezing, or materially damaged in any way;
- (b) By any methods which have the capacity and tendency or effect of deceiving any purchaser or prospective purchaser as to the quantity, size, grade, kind, species, name, age, variety, maturity, condition, vigor, hardiness, number of times transplanted, growth ability, growth characteristics, rate of growth, or time required before flowering or fruiting, price, origin, or place where grown, or in any other material respect;
- (c) That fails to meet the grade with which it is labeled;
- (d) By making other false or fraudulent representations in connection with the sale of nursery or florist stock. [I.C., § 22-2314, as added by 1984, ch. 231, § 2, p. 552; am. and redesign. 1998, ch. 89, § 17, p. 304.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 22-2314. Former § 22-2317 was amended and redesignated as § 22-2320.

22-2318. Knowingly selling, moving, or storing infected or infested nursery or florist stock prohibited — Seizure. — (1) No person shall knowingly offer to sell nursery or florist stock that is infected or infested.

(2) Unless the nursery or florist stock is held for separation or treatment under the supervision of an officer, employee, or inspector of the department, no person shall advertise, display, transport, move, store, or warehouse nursery or florist stock that is infected or infested.

(3) Any infected or infested nursery or florist stock may be seized.

(a) As used in this section, "infected" means any appearance of a disease symptom or causal agent that may, in the opinion of the department, be a menace to other nursery or florist stock or any products or properties.

(b) As used in this section, "infested" means when the mature or immature form of any plant pest, including noxious weeds as defined by the department, is found in such numbers as, in the opinion of the department, to be a menace to other nursery or florist stock or any product or properties. [I.C., § 22-2315, as added by 1984, ch. 231, § 2, p. 552; am. and redesisg. 1998, ch. 89, § 18, p. 304.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 22-2315. Former § 22-2318 was amended and redesignated as § 22-2323.

22-2319. Stop sale order — Condemnation. — (1) The department may issue and enforce a written or printed "stop-sale" order to any dealer, agent, grower, or other person who is the owner or custodian of any nursery or florist stock when the department finds such nursery or florist stock is being offered for sale in violation of any of the provisions of this chapter.

(2) The "stop-sale" order shall be in effect until the provisions of this chapter have been complied with and said nursery or florist stock is released by order, in writing, of the department. If the nursery or florist stock under "stop-sale" order is determined after a reasonable period to be in such condition that neither treatment nor passage of time will enable it to meet the requirements of this chapter for sale, the department may order such nursery or florist stock destroyed. [I.C., § 22-2316, as added by 1984, ch. 231, § 2, p. 552; am. and redesisg. 1998, ch. 89, § 19, p. 304.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 22-2316. Former § 22-2319 was amended and redesignated as § 22-2324.

22-2320. Imported nursery or florist stock to bear certificate of origin — Contents. — Nursery or florist stock imported into Idaho must be accompanied by a certificate from the place of origin, signed by an authorized agent or representative of the agency supervising and responsible for carrying out the nursery and florist stock laws of such originating state or country. The certificate shall contain additional information as may be required by the department to carry out and enforce the provisions of this chapter. [I.C., § 22-2317, as added by 1984, ch. 231, § 2, p. 552; am. and redesisg. 1998, ch. 89, § 20, p. 304.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 22-2317. Former § 22-2320 was amended and redesignated as § 22-2325.

22-2321. Nursery stock standards. — Nursery stock standard for grade, quality and size shall be those as published by the American nursery and landscape association. The department shall not actively enforce these standards except in the case of a complaint or dispute. [I.C., § 22-2321, as added by 1998, ch. 89, § 21, p. 304.]

STATUTORY NOTES

Compiler's Notes. — For American nursery and landscape association, see <http://www.anla.org>.

22-2322. Reciprocity. — The department will honor the nursery and florist license of a company doing business in, but not physically located in or having an agent in the state, provided that the license is issued by the appropriate regulatory authority in the state of origin, and that authority accepts the licenses issued by the Idaho department of agriculture for Idaho companies doing business in the same manner within that state. [I.C., § 22-2322, as added by 1998, ch. 89, § 22, p. 304.]

22-2323. Disposition and use of money received. — Fees collected shall be paid into the state treasury and credited to the agriculture [department] inspection account created by section 22-104, Idaho Code, and such fees shall be used only to carry out the provisions of this chapter. Additionally, twenty-five dollars (\$25.00) from each license fee collected under this chapter shall be credited to a special nursery research and education account. The state nursery and florist advisory committee shall approve the distribution of research and education funds to further educational outreach and research into nursery and floral production and pest control. [I.C., § 22-2318, as added by 1984, ch. 231, § 2, p. 552; am. and redesign. 1998, ch. 89, § 23, p. 304; am. 2007, ch. 52, § 1, p. 124.]

STATUTORY NOTES

Cross References. — State nursery and florist advisory committee, § 22-2304.

Amendments. — The 2007 amendment, by ch. 52, twice inserted "and education" following "research" and, in the last sentence, inserted "educational outreach and."

Compiler's Notes. — This section was formerly compiled as § 22-2318.

The bracketed insertion in the first sentence was added by the compiler to correct the name of the referenced account.

22-2324. Violation. — (1) Any person who shall violate or fail to comply with any of the provisions of this chapter shall be deemed guilty of a misdemeanor.

(2) Any person who violates or fails to comply with any of the provisions of this chapter or any rules promulgated under this chapter may be assessed a civil penalty by the department or its duly authorized agent of not more than five hundred dollars (\$500) for each offense and shall be liable for reasonable attorney's fees. Assessment of a civil penalty may be made in conjunction with any other administrative action of the department. No civil penalty may be assessed unless the person charged was given notice and

opportunity for a hearing pursuant to the Idaho administrative procedure act. If the department is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court. Any person against whom the department has assessed a civil penalty under the provisions of this section may, within thirty (30) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred. Moneys collected pursuant to this section shall be remitted to the agricultural [agriculture department] inspection account.

(3) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when he believes that the public interest will be best served by suitable warnings or other administrative action. [I.C., § 22-2319, as added by 1984, ch. 231, § 2, p. 552; am. and redesign. 1998, ch. 89, § 24, p. 304.]

STATUTORY NOTES

Cross References. — Agriculture department inspection account, § 23-104.

Idaho administrative procedure act, § 67-5201 et seq.

Penalty for misdemeanor when not otherwise provided, § 18-113.

Compiler's Notes. — This section was formerly compiled as § 22-2319.

The bracketed insertion near the end of subsection (2) was added by the compiler to correct the name of the referenced account.

22-2325. Severability. — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act. [I.C., § 22-2320, as added by 1984, ch. 231, § 2, p. 552; am. and redesign. 1998, ch. 89, § 25, p. 304.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 22-2320.

The words "this act" refer to S.L. 1984, ch.

231, which is compiled as §§ 22-2302 to 22-2310, 22-2313 to 22-2320, and 22-2323 to 22-2325.

CHAPTER 24

NOXIOUS WEEDS

SECTION.

- 22-2401. Declaration of policy.
- 22-2402. Definitions.
- 22-2403. Enforcement of chapter vested in director — State duties.
- 22-2404. State powers.
- 22-2405. County duties.
- 22-2406. County powers.
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SECTION.

- 22-2410. Weed control advisory committees.
- 22-2411. Delegation of authority.
- 22-2412. Fees charged by certifying agency.
- 22-2413. Liability of department limited.
- 22-2414 — 22-2439. [Repealed.]
- 22-2440 — 22-2447. [Amended and Redesignated.]
- 22-2448, 22-2449. [Repealed.]
- 22-2450 — 22-2457. [Amended and Redesignated.]

SECTION.

22-2458 — 22-2460. [Repealed.]
 22-2461, 22-2462. [Amended and Redesignated.]
 22-2463 — 22-2469. [Reserved.]
 22-2470 — 22-2474. [Amended and Redesignated.]
 22-2475 — 22-2480. [Repealed.]

SECTION.

22-2481, 22-2482. [Amended and Redesignated.]
 22-2483. [Repealed.]
 22-2484. [Amended and Redesignated.]
 22-2485 — 22-2487. [Repealed.]
 22-2488. [Amended and Redesignated.]

22-2401. Declaration of policy. — It is the purpose of this chapter to define noxious weeds; legal requirements, duties, and responsibilities of persons; and to provide the statutory and financial means for the control of noxious weeds, wherever such noxious weeds occur in this state. [I.C., § 22-2440, as added by 1981, ch. 309, § 2, p. 634; am. 1987, ch. 331, § 1, p. 690; am. and redesign. 1989, ch. 298, § 1, p. 730; am. and redesign. 1993, ch. 247, § 1, p. 859.]

STATUTORY NOTES

Prior Laws. — Former §§ 22-2401 — 22-2439, comprising S.L. 1911, ch. 120, §§ 1-7, p. 381; 1917, ch. 132, §§ 1-7, p. 440; reen. C.L., §§ 1942g-1942p; am. 1919, ch. 112, §§ 1-6, p. 396; C.S., §§ 3492-3501; am. 1927, ch. 204, §§ 1-5, p. 283; am. 1929, ch. 182, § 1, p. 323; 1929, ch. 231, §§ 1-6, p. 452; am. 1931, ch. 119, §§ 1-3, p. 204; I.C.A., §§ 22-1701 — 22-1712, 22-1801 — 22-1806; am. 1937, ch. 192, §§ 1-5, p. 325; am. 1939, ch. 235, §§ 1-15, p. 548; 1939, ch. 236, §§ 2, 4-6, p. 555; am.

1941, ch. 18, §§ 1, 2, p. 34; am. 1941, ch. 116, § 1, p. 209; am. 1943, ch. 91, § 1, p. 182; am. 1945, ch. 44, § 1, p. 56; am. 1945, ch. 45, § 1, p. 57; am. 1945, ch. 168, § 1, p. 251; am. 1947, ch. 30, § 1, p. 31; am. 1947, ch. 123, § 1, p. 284; am. 1951, ch. 134, §§ 1-5, p. 309; am. 1961, ch. 16, § 1, p. 16, were repealed by S.L. 1970, ch. 149, § 1.

Compiler's Notes. — This section was formerly compiled as § 22-2440 and as § 22-2470.

22-2402. Definitions. — As used in this chapter:

(1) "Agency" means:

(a) In the case of the federal government, any authority which exercises administrative control over defined areas of federal lands within the state of Idaho;

(b) In the case of the state of Idaho, any department, board, commission, or institution;

(c) In the case of local government, cities, counties and any legal subdivisions thereof, drainage districts, irrigation districts, canal companies, highway districts, or any special taxing district.

(2) "Applicable fund or account" means:

(a) In the case of the state of Idaho, the noxious weed account, which is hereby created and established in the dedicated fund and which shall be used exclusively for the purposes prescribed by this chapter;

(b) In each county, the noxious weed fund, which is hereby created and established and shall be maintained in each county and which shall be used exclusively for the purposes prescribed by this chapter.

(3) "Aquatic plant" means any plant growing in, or closely associated with, the aquatic environment and includes, but is not limited to, riparian plants.

(4) "Containment" means halting the spread of a weed infestation beyond specified boundaries.

(5) "Control" means any or all of the following: prevention, rehabilitation, eradication or modified treatments.

(6) "Control authority" means:

(a) On the state level, the director of the department of agriculture;

(b) On the county level, the board of county commissioners.

(7) "Cooperative weed management area (CWMA)" means a distinguishable hydrologic, vegetative or geographic zone based upon geography, weed infestations, climate or human-use patterns. Cooperative weed management areas may be composed of a portion of a county, a county, portions of several counties, or portions of one (1) or more states.

(8) "Department" means the Idaho department of agriculture.

(9) "Director" means the director of the department of agriculture or the director's designated agent.

(10) "Eradication" means the elimination of a noxious weed based on absence as determined by a visual inspection by the control authority during the current growing season.

(11) "Integrated weed management plan (IWMP)" means a plan developed to manage, control or eradicate a noxious weed(s) from a cooperative weed management area or other weed management area. Integrated weed management strategies may include, but are not limited to, prevention, cultural, mechanical, chemical and biological methods.

(12) "Land" means all soil or water or other growing medium.

(13) "Landowner" means:

(a) The person who holds legal title to the land, except that portion for which another person has the right to exclude others from possession of the parcel; or

(b) A person with an interest in a parcel of land such that the person has the right to exclude others from possession of the parcel.

(14) "Modified treatment" means treatment specified in an integrated weed management plan.

(15) "Noxious weed" means any plant having the potential to cause injury to public health, crops, livestock, land or other property; and which is designated as noxious by the director.

(16) "Person" means any individual, partnership, firm, agency, corporation, company, society or association.

(17) "Prevention" means:

(a) Any action that reduces the potential for the introduction or establishment of a plant species in areas not currently infested with that species; or

(b) Any action that deters the spread of noxious weeds.

(18) "Quarantine" means the regulation of the production, movement, or existence of plants, plant products, animals, animal products, or any other article or material, or the normal activity of persons, to prevent or limit introduction or spread of noxious weeds.

(19) "Rehabilitation" means the process of reconditioning formerly weed infested land to a productive or desirable condition.

(20) "Riparian" means the green, vegetated areas along the edge of water bodies like rivers, creeks, canals, lakes, springs, sloughs, potholes and

wetlands. They are the transition zone between upland and aquatic ecosystems. Underlying saturated soil is a key feature in riparian areas.

(21) "State noxious weed advisory committee" means an advisory committee appointed by the director to advise and to assist in development, modification and direction of a statewide noxious weed management strategy.

(22) "Waters" means all the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through, or which border upon the state.

(23) "Weed control advisory committee" means a committee established by weed control agencies or authorities, at the county level, or a steering committee of a cooperative weed management area, to develop and to recommend implementation of integrated weed management plans and strategies. [1970, ch. 149, § 3, p. 448; am. 1981, ch. 309, § 4, p. 634; am. 1987, ch. 331, § 3, p. 690; am. and redesisg. 1989, ch. 298, § 3, p. 730; am. and redesisg. 1993, ch. 247, § 2, p. 859; am. 1999, ch. 75, § 1, p. 212; am. 2006, ch. 225, § 1, p. 669.]

STATUTORY NOTES

Prior Laws. — Former § 22-2402 was repealed. See Prior Laws, § 22-2401.

Amendments. — The 2006 amendment, by ch. 225, added subsections (3), (5), (14), (17)(b), (20), and (22), and made related redesignations; in subsection (10), substituted the language beginning "elimination of a noxious weed based on absence" for "complete elimination of all above ground plant growth of a target noxious weed species for a

period of two (2) years"; added the last sentence in subsection (11); in subsection (19), substituted "Rehabilitation" for "Restoration"; and deleted former subsections (17) and (19), which were the definitions for "Special management zone" and "Weed control," respectively.

Compiler's Notes. — This section was formerly compiled as § 22-2442 and as § 22-2472.

22-2403. Enforcement of chapter vested in director — State duties. — (1) The duty of enforcing this chapter and carrying out its provisions is vested in the director.

(2) The director shall:

(a) Determine what weeds are noxious for the purposes of this chapter; and

(b) Compile and keep current a list of such noxious weeds or group of noxious weeds, which list shall be published and incorporated in the rules of the director; and

(c) Make and publish such rules as in the director's judgment are necessary to carry out the provisions of this chapter; and

(d) Employ a statewide weed coordinator to carry out the director's duties and responsibilities; and

(e) Publish a list of items capable of disseminating noxious weeds, and designate treatment of such articles as in the director's opinion would prevent such dissemination; and

(f) Consult and coordinate with other weed management agencies and authorities in the designation and development of cooperative weed

management areas and development and implementation of integrated weed management plans; and

(g) Assist all landowners, managers and lessees in the state of Idaho, including, but not limited to, all state natural resource management agencies, state water resource management entities, as well as public and private land management firms and private landowners, in coping with the growth of noxious weeds, including noxious aquatic weeds. [1970, ch. 149, § 4, p. 448; am. 1974, ch. 18, § 63, p. 364; am. 1976, ch. 51, § 5, p. 152; am. 1981, ch. 309, § 5, p. 634; am. 1985, ch. 66, § 1, p. 136; am. 1987, ch. 331, § 4, p. 690; am. and redesisg. 1989, ch. 298, § 4, p. 730; am. and redesisg. 1993, ch. 247, § 3, p. 859; am. 1999, ch. 75, § 2, p. 212; am. 2006, ch. 225, § 2, p. 669.]

STATUTORY NOTES

Prior Laws. — Former § 22-2403 was repealed. See Prior Laws, § 22-2401.

Amendments. — The 2006 amendment, by ch. 225, deleted former subsection (f), which read: "Consult with affected county control authorities before establishing a spe-

cial management zone"; redesignated former subsection (g) as subsection (f); and added present subsection (g).

Compiler's Notes. — This section was formerly compiled as § 22-2443 and § 22-2473.

22-2404. State powers. — (1) The director is authorized to:

- (a) Investigate the subject of noxious weeds; and
- (b) Require information, annual work plans and reports from each county and from each state agency as to the presence of noxious weeds and other information relative to noxious weeds and the control thereof; and
- (c) To cooperate with agencies and persons in carrying out the director's duties under this chapter, and to conduct matters outside this state in the interest of state noxious weed control; and
- (d) Advise and confer as to the extent of noxious weed infestations and the methods of control; and
- (e) Assist counties in the training of county weed superintendents; and
- (f) Call and attend meetings and conferences dealing with the subject of noxious weeds; and
- (g) Disseminate information and conduct educational campaigns independently or in cooperation with others; and
- (h) Appoint a state noxious weed advisory committee, as provided by section 22-103, Idaho Code, to aid in the development and implementation of a statewide noxious weed management strategy, aid in evaluation of cost share projects and research proposals, and advise the director on matters pertaining to the state noxious weed program; and
- (i) Procure materials and equipment; and
- (j) Inspect and certify Idaho crops and imports and exports to verify freedom from noxious weeds, and authorize others to conduct such inspections and certification; and
- (k) Enter on any public or private land at reasonable times for the purpose of carrying out the provisions of this chapter; and
- (l) Apply to any court of competent jurisdiction for a search warrant authorizing access to any land where access was denied and sought for the

purposes set forth in this chapter. The court may, upon such application, issue the search warrant for the purposes requested; and

(m) Perform such other acts as may be necessary or appropriate to the administration of the provisions of this chapter; and

(n) Cooperate with the federal government or any established agency thereof in any program of noxious weed control which shall be deemed advisable for the welfare of the people of the state of Idaho, accept any advisable program and make any necessary rules which are not in contradiction to the purposes of this chapter; and

(o) Accept any gift, grant, contract or other funds, or grants-in-aid from the federal government or other entities for noxious weed control purposes and account for such moneys as prescribed by the state controller, and all such funds are hereby appropriated to the purpose for which they are received; and

(p) Initiate agreements with federal agencies in accordance with applicable federal laws; and

(q) Control noxious weeds on federal land within the state, with or without reimbursement, and with the consent of the federal agency involved; and

(r) Take any appropriate action necessary to control or quarantine noxious weed infestations whenever an actual or potential emergency situation exists concerning noxious weed infestations anywhere in the state; and

(s) Initiate cooperative agreements with other agencies and states for the establishment and support of cooperative weed management areas; and

(t) Aid other weed control agencies or authorities in developing and implementing integrated weed management plans for control of noxious weeds; and

(u) Temporarily designate a weed as noxious for up to fifteen (15) months, after publication in a newspaper of general circulation serving the area of infestation; and

(v) Authorize the issuance of deficiency warrants for the purposes of defraying excess costs for the control of noxious weeds for emergency situations, in the event the actual cost for the control of noxious weeds in any one (1) year exceeds the appropriations made for that purpose. When so authorized the state controller shall draw deficiency warrants against the general account.

(2) If at any time the director determines that the county commissioners have failed to cooperate or carry out their duties and responsibilities as a control authority, the director shall notify them of the deficiency, and suggest corrective action. If the situation is not satisfactorily corrected within seven (7) days after the time outlined in the director's corrective action plan, the director shall initiate appropriate action and charge to the county all expenses including the hiring of necessary labor and equipment. Quarantine of specific crops or potential noxious weed propagating activities may be a part of the control program. [I.C., § 22-2404, as added by 1993, ch. 247, § 4, p. 859; am. 1994, ch. 180, § 18, p. 420; am. 1999, ch. 75, § 3, p. 212; am. 2006, ch. 225, § 3, p. 669.]

STATUTORY NOTES

Prior Laws. — Former § 22-2404 was repealed. See Prior Laws, § 22-2401.

Amendments. — The 2006 amendment, by ch. 225, in subsection (1)(e), substituted “Assist counties in the training” for “Establish minimum requirements and proficiency training”; deleted former subsection (1)(s), which read: “Permit modification of specific noxious weed control requirements in certain areas, after consulting with the county control authority and designating the area as a special management zone”; and made related redesignations.

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 18 of S.L. 1994, ch. 180 became effective January 2, 1995.

22-2405. County duties. — (1) The county control authority shall:

- (a) Carry out the duties and responsibilities vested in the county under this chapter and rules prescribed by the director; and
- (b) Establish and maintain a coordinated program for control of noxious weeds in the county; employ a county weed superintendent, who may be a superintendent for more than one (1) county and who shall be qualified to detect and treat noxious weeds; and
- (c) Designate one (1) of its members as the liaison between the county weed superintendent and the county commissioners; and
- (d) Provide operational and educational funds for the county weed superintendent; and
- (e) Be authorized to initiate cooperative agreements with other agencies or counties for the designation of or participation in cooperative weed management areas for control of noxious weeds.

(2) A general notice for control of noxious weeds shall be published between March 1 and April 30, in a newspaper of general circulation within the county. The notice shall contain the list of noxious weeds and identify those known to be in the county, and shall stipulate the obligation to control. Failure to publish the notice for control or serve individual notices herein provided does not relieve any person from full compliance with this chapter thereunder. In all cases said published notice shall be deemed legal and sufficient notice.

(3) Whenever any county finds it necessary to secure more prompt or definite control of noxious weeds than is accomplished by the general notice, it shall cause individual notices on a form prescribed by the director to be served upon the landowner and where possible on the operator of the land giving specific instructions when and how certain named noxious weeds are to be controlled. The individual notice shall also contain information concerning the right to appeal pursuant to section 22-2408, Idaho Code. Individual notices shall be applicable only to the current growing season.

(4) Whenever the landowner of any nonfederal land or nonfederally administered land on which noxious weeds are present has neglected or failed to initiate control as required pursuant to this chapter within five (5) working days from receipt of an individual notice given pursuant to this section, the county having jurisdiction shall have proper control methods used on such land, including necessary destruction of crops, and shall advise the landowner of the cost incurred in connection with such operation. The

cost of any such control shall be at the expense of the landowner. If the costs have not been paid to the control authority within sixty (60) days, the control authority may direct that suit be brought in a court of competent jurisdiction for the unpaid charges. On private lands, if unpaid for sixty (60) days or longer the amount of such expense shall become a lien upon the property; and thereafter the lien shall be subject to collection by the county by sale of the property in the same manner as for delinquent taxes. Nothing contained in this section shall be construed to require satisfaction of the imposed obligation by the sale of property or to bar the application of any other available remedy.

(5) Amounts collected under the provisions of this section shall be deposited to the noxious weed fund of the county and shall be accounted for as prescribed by the county auditor. Disbursements from the noxious weed fund shall be made only for noxious weed control purposes.

(6) The county weed superintendent shall:

(a) Examine all land within the county for the purpose of determining whether the provisions of this chapter and rules of the director have been complied with; and

(b) Compile data and submit reports as the director or county may require; and

(c) Implement enforcement action as outlined in this chapter; and

(d) Consult, advise and provide direction on matters pertaining to the most effective and most practical methods of noxious weed control; and

(e) Investigate or aid in the investigation and prosecution of any violation of the provisions of this chapter; and

(f) Make recommendations regarding establishment of cooperative weed management areas; and

(g) Participate on weed control advisory committees to develop and implement noxious weed control strategies for cooperative weed management areas, at the discretion of the county weed control authority. [I.C., § 22-2443A, as added by 1981, ch. 309, § 6, p. 634; am. 1987, ch. 331, § 5, p. 690; am. and redesign. 1989, ch. 298, § 5, p. 730; am. and redesign. 1993, ch. 247, § 6, p. 859; am. 1999, ch. 75, § 4, p. 212; am. 2006, ch. 225, § 4, p. 669.]

STATUTORY NOTES

Cross References. — Noxious weed fund, § 22-2402.

Prior Laws. — Former § 22-2405 was repealed. See Prior Laws, § 22-2401.

Amendments. — The 2006 amendment, by ch. 225, in subsection (4), inserted “or nonfederally administered land” near the beginning; deleted former subsection (6)(f), which read: “Meet certification requirements

as prescribed by the regulations of the director”; deleted former subsection (6)(g), which read: “Make recommendations regarding establishment of special management zones,” and redesignated former subsections (6)(h) and (6)(i) as present (6)(f) and (6)(g).

Compiler’s Notes. — This section was formerly compiled as § 22-2443A and as § 22-2474.

22-2406. County powers. — (1) The county control authority is authorized to:

(a) Have noxious weeds controlled without cost to the landowner, notwithstanding any other provision of this chapter relating to payment of cost; and

(b) Quarantine any tract of land under its jurisdiction when it appears there is an infestation of noxious weeds beyond the ability of the landowner to control and put into immediate operation the required means for the control or containment of such noxious weeds including necessary destruction of crops; and

(c) Serve individual notice on the landowner and where possible on the operator of the land prior to the entry upon such land declaring a quarantine and specifying the date of the proposed entry and the proposed cost to the violator, and advise the same person of the completion of the control operation and the required reimbursement thereof. If the landowner is not known or readily available, notice shall be deemed satisfied after eight (8) days from postmark of registered mail to the address as shown on the assessment roll of the county; and

(d) Stop movement of noxious weed infested items. Such items shall not be moved from designated premises except in accordance with the written permission of the county control authority; and

(e) Purchase or provide for equipment and materials for the control of noxious weeds, independently or in combination with other control authorities, and use such equipment or materials upon any lands within the state; and

(f) Levy annually upon all taxable property of said county a tax for the control of noxious weeds to be collected and apportioned to the county noxious weed fund, which levy shall not exceed six hundredths percent (.06%) of the market value for assessment purposes of said property in said county; and

(g) Utilize any other methods or local options that may be available for the purpose of funding a coordinated noxious weed control program on the county level; and

(h) Use the noxious weed fund, which may be a revolving fund, only for noxious weed purposes. In addition to any appropriated funds designated for the control of noxious weeds, the county control authority shall have the power to receive and disburse funds from any source as a continuing appropriation at any time for the purpose of controlling noxious weeds; and

(i) Propose and accept plans for noxious weed control which may be extended over a period of years by agreement with the landowner. The agreement shall be a contract and the control authority shall have the power and duty to enforce the terms of any such agreement; and

(j) Propose, accept and implement integrated weed management plans developed by weed control advisory committees for control of noxious weeds in cooperative weed management areas; and

(k) Designate weeds, in addition to the state noxious weed list, as noxious within their county, but such additional species are not subject to provisions of the state noxious weed laws.

(2) The county weed superintendent is authorized to:

(a) Enter upon all lands within the county where there are noxious weeds to ascertain conditions, if a reasonable attempt has been made to contact the landowner and where possible the operator of the land prior to entry and there is probable cause for entry; and

(b) Stipulate items as requiring treatment to prevent dissemination of noxious weeds, in accordance with the applicable regulations. [1970, ch. 149, § 14, p. 448; am. 1981, ch. 309, § 14, p. 634; am. 1987, ch. 331, § 13, p. 690; am. 1988, ch. 320, § 1, p. 979; am. and redesisg. 1989, ch. 298, § 13, p. 730; am. and redesisg. 1993, ch. 247, § 8, p. 859; am. 1996, ch. 208, § 3, p. 658; am. 1996, ch. 322, § 3, p. 1029; am. 1999, ch. 75, § 5, p. 212.]

STATUTORY NOTES

Cross References. — Noxious weed fund, § 22-2402.

State noxious weed list, § 22-2403.

Prior Laws. — Former § 22-2406 was repealed. See Prior Laws, § 22-2401.

Amendments. — This section was amended by two 1996 acts which appear to be compatible and have been compiled together.

The 1996 amendment, by ch. 208, § 3, in subdivision (1)(f), in language subsequently deleted, see below, deleted “and 63-2220” following “provisions of sections 63-923”.

The 1996 amendment, by ch. 322, § 3, at the end of subdivision (1)(f) deleted “, and which levy shall be exempt from the provisions of sections 63-923 and 63-2220, Idaho Code”.

Effective Dates. — Section 22 of S.L. 1996, ch. 208 declared an emergency and provided that this section should be effective July 1, 1996. Approved March 12, 1996.

22-2407. Landowner and citizen duties. — (1) It shall be the duty and responsibility of all landowners to control noxious weeds on their land and property, in accordance with this chapter and with rules promulgated by the director.

(2) The cost of controlling noxious weeds shall be the obligation of the landowner.

(3) Noxious weed control must be for prevention, eradication, rehabilitation, control or containment efforts. However, areas may be modified from the eradication requirement if the landowner is a participant in a county-approved weed management plan or county-approved cooperative weed management area.

(4) The landowner shall reimburse the county control authority for work done because of failure to comply with a five (5) day notice, as outlined in section 22-2405, Idaho Code.

(5) If an article is infested with noxious weeds, it shall not be moved from designated premises until it is treated in accordance with the applicable rules, or in accordance with the written permission of a control authority. [1970, ch. 149, § 2, p. 448; am. 1974, ch. 18, § 62, p. 364; am. 1981, ch. 309, § 3, p. 634; am. 1987, ch. 331, § 2, p. 690; am. and redesisg. 1989, ch. 298, § 2, p. 730; am. and redesisg. 1993, ch. 247, § 10, p. 859; am. 2006, ch. 225, § 5, p. 669.]

STATUTORY NOTES

Prior Laws. — Former § 22-2407 was repealed. See Prior Laws, § 22-2401.

Amendments. — The 2006 amendment, by ch. 225, in subsection (3), in the first sentence, substituted “eradication, rehabilitation, control or containment efforts” for “eradication or restoration” and, in the second sentence, substituted the language beginning

“if the landowner is a participant” for “after the director has determined them to be unreasonable for short-term eradication and has designated the area as a special management zone.”

Compiler's Notes. — This section was formerly compiled as § 22-2441 and as § 22-2471.

22-2408. Landowner and citizen powers. — (1) If any person shall be dissatisfied with the amount of any charge made against it by a county control authority for control work or for the purchase of materials or use of equipment, he may, within thirty (30) days after being advised of the amount of the charge, file a protest with the director.

(2) If any person shall be dissatisfied with the control measures used or the manner in which control is conducted upon his property, he may, within thirty (30) days file a protest with the director.

(3) Any person served with an individual notice may, within two (2) days of receipt of the notice, appeal to the board of county commissioners. A hearing shall be set by the board of county commissioners within five (5) days after receipt of notice of the appeal. Notice of the hearing shall be sent by the board of county commissioners to the appellant.

(4) Other than the procedures specifically set out in this chapter, procedures for hearings thereon and appeals pertaining to this chapter shall be as provided in chapter 52, title 67, Idaho Code. [1970, ch. 149, § 13, p. 448; am. 1974, ch. 18, § 67, p. 364; am. 1981, ch. 309, § 13, p. 634; am. 1987, ch. 331, § 12, p. 690; am. and redesign. 1989, ch. 298, § 12, p. 730; am. and redesign. 1993, ch. 247, § 11, p. 859.]

STATUTORY NOTES

Prior Laws. — Former § 22-2408 was repealed. See Prior Laws, § 22-2401. formerly compiled as § 22-2452 and as § 22-2481.

Compiler's Notes. — This section was

22-2409. Penalties for violations. — (1) Any person who violates any provision of this chapter, or any rules promulgated hereunder for carrying out the provisions of this chapter, or who fails or refuses to comply with any requirements herein specified, or who interferes with the control authority as defined in section 22-2402, Idaho Code, its agents or employees, in the execution, or on account of the execution of their duties under this chapter or rules promulgated hereunder, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than three thousand dollars (\$3,000) or be imprisoned in a county jail for not more than twelve (12) months or be subject to both such fine and imprisonment.

(2) Any person who violates or fails to comply with any provision of this chapter or any rules promulgated hereunder may be assessed a civil penalty by the control authority of not more than ten thousand dollars (\$10,000) for each offense and shall be liable for reasonable attorney's fees.

(a) Assessment of a civil penalty may be made in conjunction with any other administrative action.

(b) No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act.

(c) If the control authority is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the control authority, it may recover such amount by action in the appropriate district court.

(d) Any person against whom the control authority has assessed a civil penalty under the provisions of this section may, within thirty (30) days of the final action by the control authority making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the control authority to have occurred.

(e) All civil penalties collected pursuant to this section shall be remitted to the applicable fund or account as defined in section 22-2402, Idaho Code.

(3) Nothing in this chapter shall be construed as requiring the control authority to report minor violations for prosecution when the control authority believes that the public interest will be best served by suitable warnings or other administrative action.

(4) The control authority may bring an action to enforce the provisions of this chapter, and the penalty provided for under this section. [1970, ch. 149, § 23, p. 448; am. 1974, ch. 18, § 68, p. 364; am. 1987, ch. 331, § 19, p. 690; am. and redesisg. 1989, ch. 298, § 19, p. 730; am. and redesisg. 1993, ch. 247, § 12, p. 859; am. 2006, ch. 225, § 6, p. 669.]

STATUTORY NOTES

Cross References. — Idaho administrative procedure act, § 67-5201 et seq.

Prior Laws. — Former § 22-2409 was repealed. See Prior Laws, § 22-2401.

Amendments. — The 2006 amendment, by ch. 225, rewrote the section, which formerly read: “**Violations — Penalties.** (1) Any person knowing of the existence of any noxious weeds on lands owned or controlled by him, who fails to control such weeds in accordance with this chapter or any person who intrudes upon any land under quarantine or who moves or causes to be moved any article covered by this chapter except as provided or who prevents or threatens to prevent entry upon land as provided in this chapter, or who interferes with the carrying out of the provisions of this chapter or who violates any of the provisions of this chapter, shall be guilty of a misdemeanor and shall be subject to a fine not to exceed one thousand dollars (\$1,000) or up to one (1) year in jail or both

such fine and imprisonment for each violation. (2) The director or a control authority may bring an action to enforce the provisions of this chapter, and the penalty provided for under this section.”

Compiler's Notes. — This section was formerly compiled as § 22-2462 and as § 22-2488.

Section 24 of S.L. 1970, ch. 149, read: “If any of the provisions of this act or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the act and of the application of such provisions to other persons and circumstances shall not be affected thereby.”

Effective Dates. — Section 25 of S.L. 1970, ch. 149 provided that this act should be in full force and effect on and after July 1, 1970.

Section 263 of S.L. 1974, ch. 18, provided the act should take effect on and after July 1, 1974.

22-2410. Weed control advisory committees. — (1) Control agencies or authorities may appoint persons to a weed control advisory committee, who shall be persons knowledgeable of noxious weeds and the damage done by such weeds. The members of the advisory committee shall be residents of or landowners in one (1) of the counties included in the cooperative weed management area, and shall be appointed for renewable terms of two (2) years.

(2) It shall be the function of each weed control advisory committee to:

(a) Assist in planning and carrying out noxious weed control programs within or across county, state or federal boundaries as may be provided by cooperative agreement among the participating parties for control of noxious weeds in cooperative weed management areas; and

- (b) Act as liaison to other weed control advisory committees; and
- (c) Provide a forum for public input on matters relating to the control of noxious weeds.

(3) Members of the advisory committee may be reimbursed for actual and necessary expenses when on committee business. Expense payments may be made from the noxious weed fund.

(4) Advisory committees have no executive powers and act in an advisory capacity only. [I.C., § 22-2455, as added by 1981, ch. 309, § 16, p. 634; am. 1987, ch. 331, § 15, p. 690; am. and redesign. 1989, ch. 298, § 15, p. 730; am. and redesign. 1993, ch. 247, § 13, p. 859; am. 1999, ch. 75, § 6, p. 212.]

STATUTORY NOTES

Cross References. — Noxious weed fund, § 22-2402.

Prior Laws. — Former § 22-2410 was repealed. See Prior Laws, § 22-2401.

Compiler's Notes. — This section was formerly compiled as § 2455 and as § 22-2484.

22-2411. Delegation of authority. — The director of the department of agriculture may delegate in writing its authority, or any part thereof, under this chapter to any instrumentality or entity as an agent and servant of the state whose principal purpose is to establish and maintain a uniform and reasonable system of inspection and certification of crops, plants, plant parts or products thereof. Any agent designated hereunder shall be a servant of the state of Idaho and shall be acting in an official capacity for the state of Idaho and under the supervision of the director consistent with this chapter. The delegated instrumentality or entity as agent and servant of the state shall be an entity of the state of Idaho as provided in the tort claims act, chapter 9, title 6, Idaho Code. The control of noxious aquatic plants in the waters of state responsibility may be carried out under the general supervision of the department, county, local government, special district authority, or other public body. [I.C., § 22-2411, as added by 1999, ch. 117, § 1, p. 351; am. 2006, ch. 225, § 7, p. 669.]

STATUTORY NOTES

Prior Laws. — Former § 22-2411 was repealed. See Prior Laws, § 22-2401.

Amendments. — The 2006 amendment, by ch. 225, added the last sentence.

22-2412. Fees charged by certifying agency. — Fees may be charged by the certifying agency, under schedules set forth in rules of the department for certification of crops, plants, plant parts or products thereof under this chapter, but these fees shall have a reasonable relation to the cost, and may be used only for expenses in connection with inspection and certification and improvement of inspection and certification services. [I.C., § 22-2412, as added by 1999, ch. 117, § 1, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 22-2412 was repealed. See Prior Laws, § 22-2401.

22-2413. Liability of department limited. — The department shall not be financially responsible for debts incurred, damages inflicted, or contracts broken by the certifying agent in conducting certification work. The certifying agent shall be entitled to all the protections as provided in the tort claims act, chapter 9, title 6, Idaho Code. [I.C., § 22-2413, as added by 1999, ch. 117, § 1, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 22-2413 was repealed. See Prior Laws, § 22-2413.

22-2414 — 22-2439. Noxious weeds — Procedures for control and abatement. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — Sections 22-2414 — 22-2439 were repealed by S.L. 1970, ch. 149, § 1.

22-2440 — 22-2447. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — Former §§ 22-2440 — 22-2447 were amended and redesignated as §§ 22-2470 — 22-2478 by §§ 1-9 of S.L. 1989, ch. 298.

22-2448. Cost of prevention, control and eradication of weeds — Payment. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1970, ch. 149, § 9, p. 448; am. 1975, ch. 134, § 1, p. 295; am. 1981, ch. 309, § 10, p. 634, was repealed by S.L. 1987, ch. 331, § 9.

22-2449. Report to county auditor of work completed by control authority. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1970, ch. 149, § 10, p. 448, was repealed by S.L. 1981, ch. 309, § 1.

22-2450 — 22-2457. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — Former §§ 22-2450 — 22-2457 were amended and redesignated as §§ 22-2479 — 22-2486 by §§ 10-17 of S.L. 1989, ch. 298.

22-2458 — 22-2460. Weed eradication revolving fund, duties of county treasurer. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised 1970, ch. 149, §§ 19-21, p. 448, were repealed by S.L. 1981, ch. 309, § 1.

22-2461. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — Former § 22-2461 was amended and redesignated as § 22-2487 by § 18 of S.L. 1981, ch. 298.

22-2462. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — Former § 22-2462 was amended and redesignated as § 22-2488 by § 19 of S.L. 1989, ch. 298.

22-2463 — 22-2469. [Reserved.]

22-2470. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — Former § 22-2470 was amended and redesignated as § 22-2401 by § 1 of S.L. 1993, ch. 247.

22-2471. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — Former § 22-2471 was amended and redesignated as § 22-2407 by § 10 of S.L. 1993, ch. 247.

22-2472. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — Former § 22-2472 was amended and redesignated as § 22-2402 by § 2 of S.L. 1993, ch. 247.

22-2473. [Amended and Redesignated.]**STATUTORY NOTES**

Compiler's Notes. — Former § 22-2473 was amended and redesignated as § 22-2403 by § 3 of S.L. 1993, ch. 247.

22-2474. [Amended and Redesignated.]**STATUTORY NOTES**

Compiler's Notes. — Former § 22-2474 was amended and redesignated as § 22-2405 by § 6 of S.L. 1993, ch. 247.

22-2475 — 22-2480. Cost of controlling noxious weeds — Prevention — Necessary equipment purchases — Plans. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — The following sections were repealed by S.L. 1993, ch. 247, §§ 5, 7, and 14, effective July 1, 1993:

22-2475. (1970, ch. 149, § 5, p. 448; am. 1974, ch. 18, § 64, p. 364; am. 1981, ch. 309, § 7, p. 634; am. 1987, ch. 331, § 6, p. 690; am. and redesign. 1989, ch. 298, § 6, p. 730).

22-2476. (1970, ch. 149, § 6, p. 448; am. 1974, ch. 18, § 65, p. 364; am. 1976, ch. 51, § 6, p. 152; am. 1981, ch. 309, § 8, p. 634; am. and redesign. 1989, ch. 298, § 7, p. 730).

22-2477. (1970, ch. 149, § 7, p. 448; am. 1981, ch. 309, § 9, p. 634; am. 1987, ch. 331, § 7, p. 690; am. and redesign. 1989, ch. 298, § 8, p. 730).

22-2478. (1970, ch. 149, § 8, p. 448; am. 1974, ch. 18, § 66, p. 364; am. 1987, ch. 331, § 8, p. 690; am. and redesign. 1989, ch. 298, § 9, p. 730).

22-2479. (1970, ch. 149, § 11, p. 448; am. 1981, ch. 309, § 11, p. 634; am. 1987, ch. 331, § 10, p. 690; am. and redesign. 1989, ch. 298, § 10, p. 730).

22-2480. (1970, ch. 149, § 12, p. 448; am. 1981, ch. 309, § 12, p. 634; am. 1987, ch. 331, § 11, p. 690; am. and redesign. 1989, ch. 298, § 11, p. 730).

These sections were formerly compiled as §§ 22-2444 — 22-2447, 22-2450, and 22-2451, respectively.

22-2481, 22-2482. [Amended and Redesignated.]**STATUTORY NOTES**

Compiler's Notes. — Former §§ 22-2481 and 22-2482 were amended and redesignated as §§ 22-2408 and 22-2406, respectively, by §§ 11 and 8 of S.L. 1993, ch. 247.

22-2483. Disbursements from and repayments to the noxious weed fund. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section, (formerly compiled as § 22-2454), which comprised 1970, ch. 149, § 15, p. 448; am. 1981, ch. 309, § 15, p. 634; am. 1987, ch. 331, § 14,

p. 690; am. and redesign. 1989, ch. 298, § 14, p. 730, was repealed by S.L. 1993, ch. 247, § 9, effective July 1, 1993.

22-2484. [Amended and Redesignated.]**STATUTORY NOTES**

Compiler's Notes. — Former § 22-2484 was amended and redesignated as § 22-2410 by § 13 of S.L. 1993, ch. 247.

22-2485 — 22-2487. Emergency procedures for eradication of noxious weeds — Deficiency warrants for excess costs of weed control — Inspection. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — The following sections were repealed by S.L. 1993, ch. 247, §§ 5 and 14, effective July 1, 1993:

Former § 22-2485, which comprised I.C., § 22-2456, as added by 1981, ch. 309, § 17, p. 634; am. 1987, ch. 331, § 16, p. 690; am. and redesign. 1989, ch. 298, § 16, p. 730, was repealed by S.L. 1993, ch. 247, § 14, effective July 1, 1993.

Former § 22-2486, which comprised I.C., § 22-2457, as added by 1981, ch. 309, § 18, p. 634; am. 1987, ch. 331, § 17, p. 690; am. and

redesign. 1989, ch. 298, § 17, p. 730, was repealed by S.L. 1993, ch. 247, § 14, effective July 1, 1993.

Former § 22-2487, which comprised I.C., § 22-2461, as added by 1987, ch. 331, § 18, p. 690; am. and redesign. 1989, ch. 298, § 18, p. 730, was repealed by S.L. 1993, ch. 247, § 5, effective July 1, 1993.

These sections were formerly compiled as §§ 22-2456, 22-2457, and 22-2461, respectively.

22-2488. [Amended and Redesignated.]**STATUTORY NOTES**

Compiler's Notes. — Former § 22-2488 was amended and redesignated as § 22-2409 by § 12 of S.L. 1993, ch. 247.

CHAPTER 25**BEE INSPECTION****SECTION.**

- 22-2501. Public policy.
- 22-2502. Definitions.
- 22-2503. Director to conduct apiary inspections — Rules setting fees for requested inspections authorized.
- 22-2504. Duties of the director in controlling the spread of disease and exotic strain of bees.
- 22-2505. Duty of owner of diseased bees — Penalty.
- 22-2506. Right to inspect — Penalty for resisting.
- 22-2507. Chapter construed to permit transportation of bees — Permit.
- 22-2508. Publication of registered beekeepers.
- 22-2509. Moneys received paid into "bee inspection special fund."

SECTION.

- 22-2510. Registration — Assessment — Collection — Proceeds.
- 22-2511. Rules.
- 22-2512. Penalty for violations.
- 22-2513. Review of action of director.
- 22-2514 — 22-2516. [Repealed.]
- 22-2517 — 22-2520. [Amended and Redesignated.]
- 22-2521, 22-2522. [Repealed.]
- 22-2523, 22-2524. [Amended and Redesignated.]
- 22-2525 — 22-2528. [Repealed.]
- 22-2529. [Amended and Redesignated.]
- 22-2530, 22-2531. [Repealed.]
- 22-2532. [Amended and Redesignated.]
- 22-2533 — 22-2535. [Repealed.]
- 22-2536. [Amended and Redesignated.]
- 22-2537. [Repealed.]
- 22-2538 — 22-2540. [Amended and Redesignated.]

22-2501. Public policy. — The Idaho based bee industry has a need for inspections and certification in order to transport bees into other states for pollination; there is a further need to minimize the presence of bee pests and diseases within the state. Therefore, it is declared to be public policy of the state of Idaho to provide a qualified inspection service within the department of agriculture, to issue rules setting fees for such services and to take such action to control pests and diseases of bees as the resources provided under this chapter support. [I.C., § 22-2517, as added by 1987, ch. 96, § 2, p. 187; am. and redesisg. 2006, ch. 86, § 1, p. 251.]

STATUTORY NOTES

Prior Laws. — Former §§ 22-2501 to 22-2516, comprising S.L. 1905, p. 170, §§ 2, 3, 5-8, 10, 11; reen. R.C., §§ 1330, 1331, 1333-1336, 1338, 1339; am. 1911, ch. 152, p. 457; am. 1913, ch. 180, §§ 2, 3, 5-7, 9, 10; R.C., §§ 1340a, 1340b, as added by 1913, ch. 180, §§ 12, 13, p. 577; compiled and reen. C.L., §§ 1330, 1331, 1333-1335, 1338, 1339, 1340a, 1340b; C.S., §§ 2091, 2092, 2094-2097, 2099, 2100; am. 1929, ch. 94, §§ 1-6, 10, p. 151; C.S., §§ 2102a-2102c, 2102e, 2102f, as added by 1929, ch. 94, § 8, p. 151; am. 1931, ch. 50,

§ 1, p. 84; I.C.A., §§ 22-1901 - 22-1913, 22-1915, 22-1916, 22-1919; am. 1933, ch. 172, §§ 1-13, p. 307; am. 1935, ch. 172, § 12, p. 307, were repealed by S.L. 1963, ch. 52, § 24.

Amendments. — The 2006 amendment, by ch. 86, renumbered the section from § 22-2517 and substituted “this chapter” for “this act” in the second sentence.

Compiler’s Notes. — The words “this act” refer to S.L. 1987, ch. 96, which is compiled as §§ 22-2501 to 22-2508.

22-2502. Definitions. — The following terms shall be construed respectively when used in this chapter to mean:

(1) “Apiary” means any place where one (1) or more colonies of bees are kept, or one (1) or more hives containing honey combs or bee combs are kept.

(2) “Bee diseases” means a condition of a colony of bees wherein sufficient numbers of individual bees or the colony as a whole are afflicted by or infested with bacterial, fungal, viral, parasitic, or other organisms to the extent that the well-being of the colony is affected. Specific diseases shall be determined by rule.

(3) “Bees” means any stage of common honey bee, *Apis mellifera* L.

(4) “Colony” means the hive and bees therein with or without extra supers.

(5) “Comb” means and includes all materials which are normally deposited into hives by bees. It does not include extracted honey or royal jelly, trapped pollen and processed beeswax.

(6) “Commercial beekeeper” means a person engaged in the management of honey bees for their products and for pollination services.

(7) “Director” means the director of the Idaho department of agriculture or his designated agent.

(8) “Equipment” means hives, supers, frames, veils, gloves or any apparatus, tools, machines or other devices used in the handling and manipulation of bees, wax and hives, and shall also include any containers for honey and wax which may be used in any apiary or in transporting bees and their products and apiary supplies.

(9) “Exotic strain of bees” means African or Africanized bees (*Apis mellifera scutellata*) or any other developed strain of bees known to be harmful, but not known to be present ordinarily in this state.

(10) “Hive” means frame, hive, box, barrel, log gum, skep, or any other

receptacle or container, natural or artificial, or any part thereof, which may be used as a domicile for bees.

(11) "Hobbyist beekeeper" means a person engaged in the management of honey bees for pleasure and whose stock does not exceed fifty (50) colonies.

(12) "Persons" means individuals, associations, partnerships and corporations.

(13) "Queen apiary" means any apiary or premises in which queen bees are reared or kept for sale or gift. [1963, ch. 305, § 2, p. 795; am. 1987, ch. 96, § 3, p. 187; am. 1991, ch. 224, § 1, p. 534; am. 1993, ch. 11, § 1, p. 36; am. 1994, ch. 18, § 1, p. 33; am. and redesisg. 2006, ch. 86, § 2, p. 251.]

STATUTORY NOTES

Prior Laws. — Former § 22-2502 was repealed. See Prior Laws, § 22-2501.

Amendments. — The 2006 amendment, by ch. 86, renumbered the section from § 22-2518 and substituted "this chapter" for "this act" in the introductory paragraph; in subsection (2), inserted "or the colony as a whole"; deleted former subsection (13), which read: "Qualified bistate beekeeper" a person who is

a bona fide registered beekeeper and resident of and taxpayer of the state of Idaho, owning a bee yard or bee yards in both Idaho and another state, whose headquarters are in the state of Idaho"; and redesignated former subsection (14) as present subsection (13).

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

22-2503. Director to conduct apiary inspections — Rules setting fees for requested inspections authorized. — The director shall conduct such apiary inspections as may be required by Idaho beekeepers to transport bees to other jurisdictions. To ensure that the inspections are adequate, the director shall consult with the directors of the Idaho honey association or successor organizations, and with other persons knowledgeable in the science and art of beekeeping. The director shall establish by rule a schedule of fees for inspection work to be paid by the person requesting the inspection. [I.C., § 22-2519, as added by 1987, ch. 96, § 5, p. 187; am. and redesisg. 2006, ch. 86, § 3, p. 251.]

STATUTORY NOTES

Prior Laws. — Former § 22-2503 was repealed. See Prior Laws, § 22-2501.

Amendments. — The 2006 amendment, by ch. 86, renumbered the section from § 22-2519 and substituted "rules" for "regulations"

in the section heading; and deleted "scientists designated by the dean of the college of agriculture, University of Idaho" following "consult with" in the second sentence.

22-2504. Duties of the director in controlling the spread of disease and exotic strain of bees. — When the director shall be notified of the existence in any apiary of a transmissible bee disease or exotic strain of bees, he shall conduct appropriate investigations to the extent that the resources provided by this chapter support. If the investigation establishes the presence of such transmissible disease or exotic strain of bees, the director may order abatement by methods which he shall prescribe. These methods may include destruction of the infested bees or exotic strain of bees and contaminated equipment. Infested colonies or other equipment may not be removed from the premises on which they are found without written

permission of the director. The director may, by rule, establish tolerances of regulated bee diseases allowable in apiaries and establish a certification program for beekeepers in order to prevent and control the movement of exotic strains of bees into the state. [I.C., § 22-2520, as added by 1987, ch. 96, § 6, p. 187; am. 1993, ch. 11, § 2, p. 36; am. 1994, ch. 18, § 2, p. 33; am. and redesign. 2006, ch. 86, § 4, p. 251.]

STATUTORY NOTES

Prior Laws. — Former § 22-2504 was repealed. See Prior Laws, § 22-2501.

Amendments. — The 2006 amendment, by ch. 86, renumbered the section from § 22-

2520 and deleted “or items prohibited in section 22-2521, Idaho Code” following “strain of bees” and substituted “this chapter” for “this act” in the first sentence.

22-2505. Duty of owner of diseased bees — Penalty. — Any owner or keeper of bees, knowing or being notified by the director of the existence of a bee disease in his apiary, who fails either to comply with the instructions of the director, designed to cure said disease, or to destroy the infected bees, hives or appliances, within the time designated by the director, is guilty of a misdemeanor. [1963, ch. 305, § 7, p. 795; am. 1987, ch. 96, § 8, p. 187; am. and redesign. 2006, ch. 86, § 6, p. 251.]

STATUTORY NOTES

Cross References. — Penalty for misdemeanor when not otherwise provided, § 18-113.

Prior Laws. — Former § 22-2505 was repealed. See Prior Laws, § 22-2501.

Amendments. — The 2006 amendment, by ch. 86, renumbered the section from § 22-2523 and substituted “a bee disease” for “foulbrood or other infectious or contagious disease.”

22-2506. Right to inspect — Penalty for resisting. — The director shall have the right to enter the premises of any beekeeper where bees or equipment are kept, and inspect such bees or equipment, and any person resisting or refusing to allow such inspection shall be guilty of a misdemeanor. [1963, ch. 305, § 8, p. 795; am. 1987, ch. 96, § 9, p. 187; am. and redesign. 2006, ch. 86, § 7, p. 251.]

STATUTORY NOTES

Cross References. — Penalty for misdemeanor when not otherwise provided, § 18-113.

Prior Laws. — Former § 22-2506 was repealed. See Prior Laws, § 22-2501.

Amendments. — The 2006 amendment, by ch. 86, renumbered the section from § 22-2524.

22-2507. Chapter construed to permit transportation of bees — Permit. — This chapter shall not be construed to prevent the transportation across the Idaho state line of bees in hives, or bee supplies and equipment, between bee yards owned by, or under the control of a beekeeper registered pursuant to section 22-2510, Idaho Code. Bee colonies in transit through Idaho shall be netted while within the borders of Idaho and no such bees shall be off loaded in Idaho without full compliance of the laws. [1963, ch. 305, § 13, p. 795; am. 1987, ch. 96, § 13, p. 187; am. 1990, ch. 414, § 1, p. 1148; am. and redesign. 2006, ch. 86, § 10, p. 251.]

STATUTORY NOTES

Prior Laws. — Former § 22-2507 was repealed. See Prior Laws, § 22-2501.

Amendments. — The 2006 amendment, by ch. 86, renumbered the section from § 22-2529; and substituted “chapter” for “act” and substituted “beekeeper registered pursuant to section 22-2510, Idaho Code” for “‘qualified bi-state beekeeper.’ However, such transpor-

tation shall not be lawful unless a general and continuing permit therefor as hereinafter provided in section 22-2530, Idaho Code, shall have been first obtained from the director, and such permit may be revoked by the director upon a showing that such privilege has been or is being abused” in the first sentence.

22-2508. Publication of registered beekeepers. — The department shall make available to any pesticide applicator registered with the department, abatement or pest control district, or university of Idaho county agricultural extension office, a list of beekeepers registered with the department. The list shall include the names and telephone numbers of the beekeepers, the counties in which they keep bees, and any other information the department deems necessary to assist in the prevention of accidental poisoning of honeybees. [I.C., § 22-2508, as added by 2006, ch. 86, § 12, p. 251; am. 2007, ch. 188, § 13, p. 548.]

STATUTORY NOTES

Prior Laws. — Former § 22-2508 was repealed. See Prior Laws, § 22-2501.

Amendments. — The 2007 amendment, by ch. 188, deleted “mosquito” preceding “abatement” in the first sentence.

Effective Dates. — Section 15 of S.L. 2007, ch. 188 declared an emergency. Approved March 26, 2007.

22-2509. Moneys received paid into “bee inspection special fund.” — All moneys received pursuant to the provisions of this chapter shall be paid to the state treasurer and kept by the state treasurer in a special and separate fund to be known as the “bee inspection special fund.” [1963, ch. 305, § 16, p. 795; am. and redesisg. 2006, ch. 86, § 13, p. 251.]

STATUTORY NOTES

Prior Laws. — Former § 22-2510 was repealed. See Prior Laws, § 22-2501.

Amendments. — The 2006 amendment,

by ch. 86, renumbered the section from § 22-2532 and substituted “this chapter” for “this act.”

22-2510. Registration — Assessment — Collection — Proceeds. — (1) There is hereby levied upon each beekeeper maintaining colonies within the state of Idaho, or desiring to move bees into the state, an annual registration fee of ten dollars (\$10.00) for up to fifty (50) colonies. Each additional colony in excess of the first fifty (50) colonies shall be assessed at the rate of ten cents (10¢) per colony. Hobbyist beekeepers are exempt from registration under this section.

(2) The registration fee assessed for colonies in excess of fifty (50) colonies may be increased to not more than twenty cents (20¢) per hive or colony per year, if approved by a majority of the beekeepers voting in a referendum held for the purpose of determining whether such levy of the registration fee shall or shall not be changed. If the levy of the registration fee is changed,

the levy of the registration fee will continue annually at the changed rate until again changed by another referendum. Any resident of Idaho who is registered under this chapter as an Idaho beekeeper with the Idaho department of agriculture may vote at such referendum. Any referendum to be held for the purpose of changing the levy of such registration fee shall be held at the annual meeting of the Idaho honey industry association or any successor organization to this group.

(3) Said registration fee shall be a lien upon all apicultural products, equipment, bees and property of the person owning or controlling such bees and shall be prior to all other liens or encumbrances except liens which are declared prior by operation of the statutes of this state. [1963, ch. 305, § 20, p. 795; am. 1970, ch. 135, § 2, p. 328; am. 1976, ch. 119, § 1, p. 459; am. 1990, ch. 414, § 2, p. 1148; am. 1991, ch. 224, § 2, p. 534; am. and redesign. 2006, ch. 86, § 14, p. 251.]

STATUTORY NOTES

Prior Laws. — Former § 22-2510 was repealed. See Prior Laws, § 22-2501.

Amendments. — The 2006 amendment, by ch. 86, renumbered the section from § 22-2536; substituted “Registration” for “Tax on bees” at the beginning of the section heading; redesignated former subsections (a), (b), and

(c) as present subsections (1), (2), and (3); substituted “registration fee” for “tax” throughout the section; in subsection (1), inserted “maintaining colonies”, substituted “Idaho, or desiring to move bees into the state, an annual registration fee” for “Idaho a registration fee”, and added the last sentence.

22-2511. Rules. — It is hereby made the duty of the department of agriculture to make reasonable rules as necessary for or as an aid to the effectuation of any provision of this chapter, and to prepare and cause to be printed suitable forms for the proper administration of this chapter. [1963, ch. 305, § 22, p. 795; am. and redesign. 2006, ch. 86, § 15, p. 251.]

STATUTORY NOTES

Cross References. — Penalty for misdemeanor when not otherwise provided, § 18-113.

Prior Laws. — Former § 22-2511 was repealed. See Prior Laws, § 22-2501.

Amendments. — The 2006 amendment, by ch. 86, renumbered the section from § 22-2538 and twice substituted “this chapter” for “this act.”

22-2512. Penalty for violations. — (1) Any person who violates or fails to comply with any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or be imprisoned in the county jail for not less than three (3) months nor more than twelve (12) months or be subject to both such fine and imprisonment.

(2) Any person who violates or fails to comply with any of the provisions of this chapter or any rules promulgated under this chapter may be assessed a civil penalty by the department or its duly authorized agent of not more than one hundred dollars (\$100) for each offense and shall be liable for reasonable attorney’s fees. Assessment of a civil penalty may be made in conjunction with any other department administrative action. No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act. If the department is

unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court. Any person against whom the department has assessed a civil penalty under the provisions of this section may, within thirty (30) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred. Moneys collected for violation of a rule shall be remitted to the agricultural [agriculture department] inspection account.

(3) Any bees, colonies, equipment or hives, imported into this state by a nonresident person, in violation of any provision of this chapter shall be subject to seizure by the department. Any bees, colonies, equipment or hives found on any property without the permission of the landowner or not identified with the owner's name, address, phone and registration numbers or found to be in violation of this chapter or rules adopted by the department, shall also be subject to seizure by the department. Any bees, colonies, equipment or hives not claimed and brought into compliance with the provisions of this chapter within ninety (90) days from the date of seizure may be sold at public auction by a sealed bid.

(4) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when he believes that the public interest will be best served by suitable warnings or other administrative action. [1963, ch. 305, § 23, p. 795; am. 1991, ch. 224, § 3, p. 534; am. 1999, ch. 324, § 1, p. 832; am. and redesign. 2006, ch. 86, § 16, p. 251.]

STATUTORY NOTES

Cross References. — Agriculture department inspection account, § 22-104.

Idaho administrative procedure act, § 67-5201 et seq.

Prior Laws. — Former § 22-2512 was repealed. See Prior Laws, § 22-2501.

Amendments. — The 2006 amendment, by ch. 86, renumbered this section from § 22-2539.

Compiler's Notes. — The bracketed insertion near the end of subsection (2) was added by the compiler to correct the name of the referenced account.

Section 25 of S.L. 1963, ch. 305 read: "If any clause, sentence, paragraph, section, or any part or portion of this act shall be declared or adjudged to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect, invalidate, or nullify the remainder of this act."

Effective Dates. — Section 26 of S.L. 1963, ch. 305 declared an emergency. Approved March 27, 1963.

22-2513. Review of action of director. — Any individual who has exhausted all administrative remedies available within the department and who is aggrieved by a final decision in a contested case is entitled to judicial review in accordance with chapter 52, title 67, Idaho Code. The review may be obtained by filing in the district court within thirty (30) days following the action of the director a written petition praying that such action be set aside. A copy of such petition shall forthwith be delivered to the director and within thirty (30) days thereafter, the director shall certify and file in the district court of the area affected a transcript of any record pertaining thereto, including a transcript of evidence received at any hearing of referendum. The district court shall give notice by United States mail, to the

director and to the petitioner or petitioners of the time and place at which the court will hear such petition, at which time any interested party may be heard. Upon completion of the hearing, the court shall affirm, set aside or modify the action of the director, except that the finding of the director as to the facts, if supported by substantial evidence, shall be conclusive. [I.C., § 22-2540, as added by 1991, ch. 224, § 4, p. 534; am. 2001, ch. 183, § 2, p. 613; am. and redesign. 2006, ch. 86, § 17, p. 251.]

STATUTORY NOTES

Prior Laws. — Former § 22-2513 was repealed. See Prior Laws, § 22-2501. by ch. 86, renumbered this section from § 22-2540.

Amendments. — The 2006 amendment,

22-2514 — 22-2516. Bee inspection — Inspectors — Destruction of diseased colonies — Penalties. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — Former §§ 22-2514 to 22-2516 were repealed. See Prior Laws, § 22-2501.

22-2517. [Amended and Redesignated.]

STATUTORY NOTES

Prior Laws. — Another former § 22-2517, which comprised 1963, ch. 305, § 1, p. 795, was repealed by S.L. 1987, ch. 96, § 1.

Compiler's Notes. — Former § 22-2517 has been amended and redesignated as § 22-2501, pursuant to S.L. 2006, ch. 86, § 1.

22-2518. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — Former § 22-2518 has been amended and redesignated as § 22-2502, pursuant to S.L. 2006, ch. 86, § 2.

22-2519. [Amended and Redesignated.]

STATUTORY NOTES

Prior Laws. — Another former § 22-2519, which comprised 1963, ch. 305, § 3, p. 795; am. 1974, ch. 18, § 69, p. 364, was repealed by S.L. 1987, ch. 96, § 4.

Compiler's Notes. — Former § 22-2519 has been amended and redesignated as § 22-2503, pursuant to S.L. 2006, ch. 86, § 3.

22-2520. [Amended and Redesignated.]

STATUTORY NOTES

Prior Laws. — Another former § 22-2520, which comprised 1963, ch. 305, § 4, p. 795; am. 1970, ch. 135, § 1, p. 328; am. 1974, ch.

18, § 70, p. 364, was repealed by S.L. 1987, ch. 96, § 4.

Compiler's Notes. — Former § 22-2520

has been amended and redesignated as § 22-2504, pursuant to S.L. 2006, ch. 86, § 4.

22-2521. Enclosure of combs — Hive containing comb not occupied by live bees — Abatement. [Repealed.]

STATUTORY NOTES

Prior Laws. — Another former § 22-2521, which comprised 1939, ch. 235, § 12, p. 548; am. 1974, ch. 18, § 71, p. 364, was repealed by S.L. 1987, ch. 96, § 4.

Compiler's Notes. — This section, which comprised I.C., § 22-2521, as added by 1987, ch. 96, § 7, p. 187, was repealed by S.L. 2006, ch. 86, § 5.

22-2522. Duty of apiary inspector — Permit to move diseased bees. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1963, ch. 305, § 6, p. 795, was repealed by S.L. 1987, ch. 96, § 4.

22-2523. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — Former § 22-2523 has been amended and redesignated as § 22-2505, pursuant to S.L. 2006, ch. 86, § 6.

22-2524. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — Former § 22-2524 has been amended and redesignated as § 22-2506, pursuant to S.L. 2006, ch. 86, § 7.

22-2525. Permit to bring comb honey and bees into state. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1963, ch. 305, § 9, p. 795; am. 1987, ch. 96, § 10, p. 187, was repealed by S.L. 2006, ch. 86, § 8.

22-2526. Importation of bees — Permit requirements. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1963, ch. 305, § 10, p. 795; am. 1987, ch. 96, § 11, p. 187, was repealed by S.L. 2006, ch. 86, § 9.

22-2527, 22-2528. Application for permit — Investigation — Hearing — Notice — Appeal — Quarantine — Penalty. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, 795; am. 1974, ch. 18, § 72, p. 364, were which comprised 1963, ch. 305, §§ 11, 12, p. repealed by S.L. 1987, ch. 96, § 12.

22-2529. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — Former § 22-2529 has been amended and redesignated as § 22-2507, pursuant to S.L. 2006, ch. 86, § 10.

22-2530. Annual general and continuing permit. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which 1987, ch. 96, § 14, p. 187, was repealed by comprised 1963, ch. 305, § 14, p. 795; am. S.L. 2006, ch. 86, § 11.

22-2531. Special pollination permit — Application form — Registration of imported bees — Fee. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1963, ch. 305, § 15, p. 795, was repealed by S.L. 1987, ch. 96, § 15.

22-2532. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — Former § 22-2532 has been amended and redesignated as § 22-2509, pursuant to S.L. 2006, ch. 86, § 13.

22-2533, 22-2534. Notice to transfer bees from box hive — Duty of inspector to disinfect tools — Penalties. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised 1963, ch. 305, §§ 17, 18, p. 795, were repealed by S.L. 1987, ch. 96, § 15.

22-2535. Owner's annual statement — Duty of department of agriculture — Duty of county assessor — Penalty. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1963, ch. 305, § 19, p. 795, was repealed by S.L. 1970, ch. 135, § 3.

22-2536. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — Former § 22-2536 has been amended and redesignated as § 22-2510, pursuant to S.L. 2006, ch. 86, § 14.

22-2537. Special levy moneys paid into "bee inspection special fund" — Claims. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1963, ch. 303, § 21, p. 795; am. 1974, ch. 18, § 73, p. 364, was repealed by S.L. 1987, ch. 96, § 15.

22-2538. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — Former § 22-2538 has been amended and redesignated as § 22-2511, pursuant to S.L. 2006, ch. 86, § 15.

22-2539. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — Former § 22-2539 has been amended and redesignated as § 22-2512, pursuant to S.L. 2006, ch. 86, § 16.

22-2540. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — Former § 22-2540 has been amended and redesignated as § 22-2513, pursuant to S.L. 2006, ch. 86, § 17.

CHAPTER 26

COOPERATIVE MARKETING ASSOCIATIONS

SECTION.

- 22-2601. Declaration of policy.
- 22-2602. Definitions — Short title.
- 22-2603. Associations — Who may organize.
- 22-2604. Purposes.
- 22-2605. Preliminary investigation.
- 22-2606. Powers.
- 22-2607. Members.
- 22-2608. Articles of incorporation — Contents — Subscribing and filing.
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- 22-2610. Bylaws — Adoption — Contents — Amendment.
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- 22-2613. Election of officers.
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- 22-2615. Removal of officer or director.
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SECTION.

- 22-2617. Marketing contract.
- 22-2618. Purchasing business of other associations, persons, firms or corporations — Payment — Stock issued.
- 22-2619. [Repealed.]
- 22-2620. Conflicting laws not to apply.
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- 22-2622. Contracts and agreements with other associations.
- 22-2622A. Consolidation and merger agreements — Voting requirements.
- 22-2623. Association heretofore organized may adopt provisions of chapter.
- 22-2624. Inducing breach of marketing contract — Spreading false reports about finances or management — Penalties.
- 22-2625. Separability.
- 22-2626. Application of general corporation laws.
- 22-2627. Classification of directors.
- 22-2628. [Repealed.]

22-2601. Declaration of policy. — In order to promote, foster and encourage the intelligent and orderly marketing of agricultural products through cooperation and to eliminate speculation and waste, and to make the distribution of agricultural products as direct as can be efficiently done between producer and consumer, and to stabilize the marketing problems of agricultural products, this chapter is passed. [1921, ch. 124, § 1, p. 298; I.C.A., § 22-2001.]

STATUTORY NOTES

Cross References. — Income tax exemption of farmers' cooperatives, 26 USCS § 501(c)(16).

JUDICIAL DECISIONS

ANALYSIS

- Actions against.
- Actions by.
- Agricultural employment or pursuit.
- Assignment of accounts.
- Construction.

Actions Against.

Members of voluntary association not organized under statute may be sued without an accounting in equity. *Idaho Apple Growers' Ass'n v. Brown*, 50 Idaho 34, 293 P. 320 (1930).

Actions By.

Cooperative marketing association which is incorporated is not entitled to maintain action as assignee of an unincorporated voluntary association, designated by the same name,

under the evidence in the case. *Idaho Apple Growers' Ass'n v. Brown*, 51 Idaho 540, 7 P.2d 591 (1932).

Agricultural Employment or Pursuit.

Truck drivers performing services for farmers' cooperative corporation in collecting milk from member and nonmember are engaged in an agricultural pursuit within meaning of statute. In re *Farmers Co-op. Creamery Co.*, 66 Idaho 70, 155 P.2d 762 (1945).

Assignment of Accounts.

Where books of unincorporated voluntary association came into the possession of an employee, agent, or officer of that association, the mere fact that such person later became manager and successor of an association, incorporated under this statute and designated by the same name as the unincorporated association, does not operate to transfer accounts of the former to the latter. *Idaho Apple Growers' Ass'n v. Brown*, 51 Idaho 540, 7 P.2d 591 (1932).

Construction.

The earlier cooperative marketing act was not prevailed over by the later track buyers act (now repealed) as each statute was general in its application to all persons and organizations falling within its scope and purpose; likewise each was special in that each dealt with a distinct and particular class of persons and organizations concerned in the marketing of farm products, the types of persons and organizations concerned in these statutes being wholly different and distinct each from the other as was also the legislative objective of each and there was no inconsistency or conflict between them that would effect a repeal or amendment of the earlier act. *Idaho Wool Mktg. Ass'n v. Mays*, 80 Idaho 365, 330 P.2d 337 (1958).

Cited in: *Fort Hall Indian Stockmen's Ass'n v. Thorpe*, 82 Idaho 458, 354 P.2d 516 (1960).

RESEARCH REFERENCES

Am. Jur. — 18 Am. Jur. 2d, Cooperative Associations, §§ 1, 4.

22-2602. Definitions — Short title. — As used in this chapter:

a. The term "agricultural products" shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bee and any farm products;

b. The term "member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock;

c. The term "association" means any corporation organized under this chapter; and

d. The term "person" shall include individuals, firms, partnerships, corporations and associations.

Associations organized hereunder shall be deemed nonprofit, inasmuch as they are not organized to make profits for themselves, as such, or for their members, as such, but only for their members as producers.

Any instrument, or interest, which (a) qualifies its holder to be a member or patron of an association, or; (b) represents a patronage refund or other patronage allocation, which is part of a class issuable only to persons who deal in agricultural products or commodities with or obtain services from the association; or (c) represents the terms or conditions by which members or patrons purchase or sell agricultural products or commodities from, to, or through the association, (including any property right or interest in any arrangement to purchase or sell agricultural products, commodities or supplies between the association and its members or patrons) shall not be considered to be a security as used in title 30, chapter 14, Idaho Code, and shall not be subject to the provisions of said chapter.

The foregoing shall apply to any association operating as an agricultural cooperative, which is qualified to do business in the state of Idaho as an

agricultural marketing association, and which possesses no greater powers than those provided such an association under this chapter.

This chapter shall be referred to as the "Cooperative Marketing Act." [1921, ch. 124, § 2, p. 298; I.C.A., § 22-2002; am. 1976, ch. 41, § 1, p. 88.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS

Cited in: Idaho Wool Mktg. Ass'n v. Mays, 80 Idaho 365, 330 P.2d 337 (1958).

22-2603. Associations — Who may organize. — Five (5) or more persons engaged in the production of agricultural products may form a nonprofit, cooperative association, with or without capital stock, under the provisions of this chapter. [1921, ch. 124, § 3, p. 298; I.C.A., § 22-2003.]

STATUTORY NOTES

Compiler's Notes. — This section was cited in *Frost v. Corporation Comm'n*, 278 U.S. 515, 49 S. Ct. 235, 73 L. Ed. 483 (1929). This case arose under Oklahoma statutes. It was held that a permit to run a cotton gin could not be issued to a cooperative corporation with capital stock and provision for mak-

ing profit any more than to anyone else, without a showing of public necessity. The Idaho statute was cited in the dissenting opinion as an illustration of cooperative marketing acts which provide that associations formed thereunder may organize either with or without capital stock.

JUDICIAL DECISIONS

Cited in: Idaho Wool Mktg. Ass'n v. Mays, 80 Idaho 365, 330 P.2d 337 (1958).

RESEARCH REFERENCES

Am. Jur. — 18 Am. Jur. 2d, Cooperative Associations, §§ 14, 18.

22-2604. Purposes. — An association may be organized to engage in any activity in connection with the production, marketing or selling of the agricultural products of its members, or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping or utilization thereof, or the manufacturing or marketing of the by-products thereof; or in connection with the purchasing, manufacturing, selling or supplying to its members of machinery, equipment or supplies; or in the financing of the above enumerated activities; or in any one or more of the activities specified herein. [1921, ch. 124, § 4, p. 298; I.C.A., § 22-2004; am. 1933, ch. 212, § 1, p. 445.]

RESEARCH REFERENCES

Am. Jur. — 18 Am. Jur. 2d, Cooperative Associations, § 4.

22-2605. Preliminary investigation. — Every group of persons contemplating the organization of an association under this chapter, is urged to communicate with the department of agriculture, who will inform it whatever a survey of the marketing conditions affecting the commodities to be handled by the proposed association indicates regarding probable success. [1921, ch. 124, § 5, p. 298; I.C.A., § 22-2005.]

JUDICIAL DECISIONS

Dairy Farmers.

Dairy farming is an agricultural pursuit within the meaning of the unemployment compensation law excepting agricultural la-

bor from the provisions thereof. In re Farmers Co-op. Creamery Co., 66 Idaho 70, 155 P.2d 762 (1945).

22-2606. Powers. — Each association incorporated under this chapter shall have the following powers:

a. To engage in any activity in connection with the production, marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling or utilization of any agricultural products produced or delivered to it by its members; or the manufacturing or marketing of the by-products thereof; or in connection with the purchasing, hiring, manufacturing, selling, or use to, by, or for its members of supplies, machinery or equipment; or in the financing of any such activities; or in any one or more of the activities specified in this section. An association may do business with nonmembers in an amount not to exceed that done with members.

b. To borrow money and to make advances to members.

c. To act as the agent or representative of any member or members in any of the above-mentioned activities.

d. To purchase or otherwise acquire, and to hold, own and exercise all rights of ownership in, and to sell, transfer, or pledge shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association.

e. To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the bylaws.

f. To buy, hold and exercise all rights of ownership, over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto.

g. To do each and every thing necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated; or conducive to or expedient for the interest or benefit of the association; and to contract accordingly; and in addition to exercise and possess all powers, rights and privileges necessary or incidental to the purposes, for which the association is organized or to the activities in which it is engaged; and in addition, any other rights, powers

and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the express provisions of this chapter; and to do any such thing anywhere. [1921, ch. 124, § 6, p. 298; am. 1923, ch. 179, § 1, p. 279; I.C.A., § 22-2006; am. 1933, ch. 212, § 2, p. 445.]

JUDICIAL DECISIONS

Declaratory Judgments.

Where questions involved in a declaratory judgment action were whether certain alleged sales made by a cooperative to members thereof were subject to a sales tax but the real question was whether the transactions under

consideration were, in fact, sales, the real question was not before the court and declaratory judgment should be refused. *State ex rel. Diefendorf v. Idaho Egg Producers*, 59 Idaho 38, 80 P.2d 28 (1938).

RESEARCH REFERENCES

Am. Jur. — 18 Am. Jur. 2d, Cooperative Associations, § 26 et seq.

22-2607. Members. — a. Under the terms and conditions prescribed in its bylaws, an association may admit as members, or issue common stock, only to persons engaged in the production of agricultural products to be handled by or through the association, or to agricultural producers using supplies handled by or through the association organized for that purpose, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

b. If a member of a nonstock association be other than a natural person, such member may be represented by any individual, associate, officer or member thereof, duly authorized in writing.

c. One association organized hereunder may become a member or stockholder of any other association or associations, organized hereunder. [1921, ch. 124, § 7, p. 298; I.C.A., § 22-2007; am. 1933, ch. 212, § 3, p. 445.]

JUDICIAL DECISIONS

Particular Class of Persons.

The earlier cooperative marketing act is not prevailed over by the later track buyers act (now repealed) as each statute is general in its application to all persons and organizations falling within its scope and purpose, likewise each is special in that each deals with a distinct and particular class of persons and organizations concerned in the marketing

of farm products, the types of persons and organizations concerned in these statutes being wholly different and distinct each from the other as is also the legislative objective of each and there is no inconsistency or conflict between them that would effect a repeal or amendment of the earlier act. *Idaho Wool Mktg. Ass'n v. Mays*, 80 Idaho 365, 330 P.2d 337 (1958).

RESEARCH REFERENCES

Am. Jur. — 18 Am. Jur. 2d, Cooperative Associations, § 18 et seq.

22-2608. Articles of incorporation — Contents — Subscribing and filing. — Each association formed under this chapter must prepare and file articles of incorporation, setting forth:

- (1) The name of the association.
- (2) The purpose for which it is formed.
- (3) The address of its initial registered office and the name of its initial registered agent at such address.
- (4) The term for which it is to exist, which may be perpetual.
- (5) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed; and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This provision of the articles of incorporation shall not be altered, amended or repealed except by the written consent or the vote of a majority of the members.
- (6) If organized with capital stock, the amount of such stock and the number of shares into which it is divided and the par value thereof. The capital stock may be divided into preferred and common stock. If so divided, the articles of incorporation must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and the nature and extent of the preference and the privileges granted to each.
- (7) The names and addresses of the persons who are to serve as directors until the first annual meeting of the members or stockholders or until their successors be elected and qualify.

The articles must be subscribed by the incorporators and shall be filed in accordance with the provisions of the general corporation law of the state; and when so filed the said articles of incorporation, or certified copies thereof, shall be received in all the courts of this state, and other places, as prima facie evidence of the facts contained therein, and of the due incorporation of such association. [1921, ch. 124, § 8, p. 298; am. 1929, ch. 246, § 1, p. 501; I.C.A., § 22-2008; am. 1980, ch. 76, § 1, p. 158; am. 2004, ch. 106, § 1, p. 380.]

RESEARCH REFERENCES

Am. Jur. — 18 Am. Jur. 2d, Cooperative Associations, § 13 et seq.

22-2609. Articles of incorporation — Amendment. — The articles of incorporation may be altered or amended in any respect, including increases or decreases in capital stock, at any regular meeting or at any special meeting called for that purpose. An amendment must first be approved by two-thirds (2/3) of the directors and then adopted by the affirmative vote of two-thirds (2/3) of the members or stockholders of the association present at such meeting, except as otherwise provided in section 22-2608[, Idaho Code], and provided that a quorum as specified in the by-laws of the association be present. Amendments of the articles of incorporation, when so adopted shall be filed in accordance with the provisions of the general

corporation law of this state. [1921, ch. 124, § 9, p. 298; am. 1929, ch. 246, § 2, p. 501; I.C.A., § 22-2009.]

STATUTORY NOTES

Cross References. — Filing of amendments under general corporation law, § 30-1-1001 et seq.

Compiler's Notes. — The bracketed insertion was added by the compiler.

22-2610. Bylaws — Adoption — Contents — Amendment. — Each association incorporated under this chapter must, within thirty (30) days after its incorporation, adopt for its government and management, a code of bylaws, not inconsistent with the powers granted by this chapter. A majority vote of the members or stockholders, or their written assent, is necessary to adopt such bylaws. Each association under its bylaws may, also, provide for any or all of the following matters:

- a. The time, place and manner of calling and conducting its meetings.
- b. The number of stockholders or members constituting a quorum.
- c. The right of members or stockholders to vote by proxy or by mail or by both, and the conditions, manner, form, and effects of such votes.
- d. The number of directors thereof, which must not be less than five (5) and may be any number in excess thereof, the term of office of such directors and the number of directors constituting a quorum.
- e. The qualifications, compensation and duties and term of office of directors and officers; time of their election and the mode and manner of giving notice thereof.
- f. Penalties for violations of the bylaws.
- g. The amount of entrance, organization and membership fees, if any; the manner and method of collection of the same, and the purposes for which they may be used.
- h. The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member or stockholder for services rendered by the association to him and the time of payment and the manner of collection; and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign.
- i. The number and qualification of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members, and of the shares of common stock; the conditions upon which, and time when membership of any member shall cease. The automatic suspension of the rights of a member when he ceases to be eligible to membership in the association, and mode, manner and effect of the expulsion of the member; manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder, or upon the expulsion of a member of forfeiture of his membership, or, at the

option of the association, by conclusive appraisal by the board of directors. In case of the withdrawal or expulsion of a member the board of directors shall make certain that the capital furnished by such terminated member is correctly recorded on the books of the corporation in direct relationship to his patronage and such terminated member shall be notified of such interest by payment in money or issuance of stock in the association or issuance of such other evidence of the capital interest as the bylaws of the association may permit or any combination of the foregoing; within one (1) year after such expulsion or withdrawal.

This act is intended to permit the association to establish and accumulate reasonable reserves and surplus funds and to abolish the same; also to create, maintain, and terminate revolving funds or other similar funds; to utilize a revolving fund method of financing, or such other methods as may be prudent and compatible with agricultural cooperative organizations; in the manner as provided for in the bylaws of the association.

The interest of an existing or former member in the association's capital reserve or equity accounts is an equity interest and not a debt, and is revolvable in the manner defined in the bylaws and subject to the restrictions defined therein. The issuance of notices of allocation and/or of equity reserve balances, or any other form sufficient to place the existing or former member on notice of his equity interest in the association shall satisfy the recording, appraisal, notification and/or payment requirement hereinabove set forth or as set forth in the bylaws. Revolving of capital reserve or equity accounts shall be at the discretion of the board of directors and the bylaws may specifically so provide.

Non-equity obligations will be paid according to their terms.

Obligations such as checks or drafts issued by the association to the patron, credits in a capital reserve or equity account called for revolving by the board of directors of the association, remaining uncashed or unclaimed at the expiration of the period of five (5) years after the issuance, call for payment, or stated maturity date thereof, shall be deemed, if authorized by the bylaws and at the direction of the board of directors, transferred, as a contribution, to the capital fund of the association, this being an exception to chapter 5, title 14, Idaho Code.

The bylaws of any association incorporated under this chapter may be altered or amended at any regular meeting or at any special meeting of the members or stockholders thereof called for that purpose by the affirmative vote of two-thirds (2/3) of the members or stockholders present at such meeting; provided, that a quorum as specified in the bylaws of the association be present: and, provided further, that where the bylaws of said association authorize voting by mail and a mail vote pursuant to such bylaws is taken on the question of altering or amending such bylaws, the affirmative vote of a majority of all members or stockholders voting on such question shall be required. [1921, ch. 124, § 10, p. 298; am. 1929, ch. 246, § 3, p. 501; I.C.A., § 22-2010; am. 1986, ch. 4, § 1, p. 41; am. 1991, ch. 163, § 1, p. 390.]

STATUTORY NOTES

Compiler's Notes. — The words "this act", paragraph i., refer to S.L. 1986, ch. 4, compiled as this section.
in the first undesignated paragraph following

RESEARCH REFERENCES

Am. Jur. — 18 Am. Jur. 2d, Cooperative Associations, § 13 et seq.

22-2611. General and special meetings — How called. — In its bylaws each association shall provide for one or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time, and ten per cent (10%) of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least ten (10) days prior to the meeting: provided, however, that the bylaws may require instead that such notice may be given by publication in a newspaper of general circulation, published at the principal place of business of the association. [1921, ch. 124, § 11, p. 298; I.C.A., § 22-2011.]

22-2612. Directors — Election — Appointment — Remuneration — Prohibited contracts — Vacancies. — The affairs of the association shall be managed by a board of not less than five (5) directors, elected by the members or stockholders from their own number. The bylaws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts. In such a case the bylaws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The bylaws may provide that primary elections should be held in each district to elect the directors apportioned to such districts and the result of all such primary elections must be ratified by the next regular meeting of the association.

The bylaws may provide that one or more directors may be appointed by the department of agriculture or any other public official or commission. The director or directors so appointed need not be members or stockholders of the association, but shall have the same powers and rights as other directors.

An association may provide a fair remuneration for the time actually spent by its officers and directors in its service. No director, during the term of his office, shall be a party to a contract for a profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association, or to any other kind of contract differing from terms generally current in that district.

When a vacancy on the board of directors occurs, other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy, unless the bylaws provide for an election of directors by district.

[In] such a case the board of directors shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy. [1921, ch. 124, § 12, p. 298; I.C.A., § 22-2012.]

STATUTORY NOTES

Compiler's Notes. — The bracketed word "In" in the last paragraph was inserted by the compiler.

RESEARCH REFERENCES

Am. Jur. — 18 Am. Jur. 2d, Cooperative Associations, § 16 et seq.

22-2613. Election of officers. — The directors shall elect from their number a president and one (1) vice-president. They shall, also, elect a secretary and treasurer, who need not be directors, and they may combine the two (2) latter offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depository, and as such shall not be considered as an officer but as a function of the board of directors. In such case the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as authorized by the board of directors. They shall also elect such additional vice-presidents and other officers as may be provided for in the bylaws of the association, and such additional vice-presidents or other officers need not be directors or members of the association. [1921, ch. 124, § 13, p. 298; am. 1929, ch. 246, § 4, p. 501; I.C.A., § 22-2013.]

22-2614. Stock — Membership certificates — When issued — Voting — Liability — Limitations on transfer and ownership. — When a member of an association established without capital stock, has paid his membership fee in full, he shall receive a certificate of membership.

No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but such retention as security shall not affect the members' right to vote.

Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

No stockholder of a cooperative association shall own more than one-twentieth (1/20) of the issued common stock of the association; and an association, in its bylaws, may limit the amount of common stock which one (1) member may own to any amount less than one-twentieth (1/20) of the issued common stock.

No member or stockholder shall be entitled to more than one (1) vote.

Any association organized with stock under this act may issue preferred stock, with or without the right to vote. Such stock may be redeemable or

retirable by the association on such terms and conditions as may be provided for by the articles of incorporation and printed on the face of the certificate.

The by-laws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto.

The association may, at any time, except when the debts of the association exceed fifty per cent (50%) of the assets thereof, buy in or purchase its common stock at book value thereof as conclusively determined by the board of directors and pay for it in cash within one (1) year thereafter. [1921, ch. 124, § 14, p. 298; I.C.A., § 22-2014.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" 2601 to 22-2618, 22-2620 to 22-2622, and refer to S.L. 1921, ch. 124, compiled as §§ 22- 22-2623 — 22-2626.

22-2615. Removal of officer or director. — Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by ten percent (10%) of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association and, by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; and the person or persons bringing the charges against him shall have the same opportunity.

In case the bylaws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by twenty percent (20%) of the members residing in the district from which he is elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question shall be removed from office. [1921, ch. 124, § 15, p. 298; I.C.A., § 22-2015.]

22-2616. Referendum. — Upon demand of one-third (1/3) of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership or the stockholders for decision at the next special or regular meeting: provided, however, that a special meeting may be called for the purpose. [1921, ch. 124, § 16, p. 298; I.C.A., § 22-2016.]

22-2617. Marketing contract. — The association and its members may make and execute marketing contracts, requiring the members to sell, for any period of time, not over ten (10) years, all or any specified part of

their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members, with or without taking title thereto; and pay over to its members the resale price, after deducting all necessary selling, overhead and other costs and expenses, including interest on preferred stock not exceeding eight percent (8%) per annum, and reserves for retiring the stock, if any; and other proper reserves; and interest not exceeding eight percent (8%) per annum upon common stock.

The bylaws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him of any provision of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts of this state.

In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract, and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member. [1921, ch. 124, § 17, p. 298; I.C.A., § 22-2017.]

JUDICIAL DECISIONS

Cited in: Idaho Wool Mktg. Ass'n v. Mays,
80 Idaho 365, 330 P.2d 337 (1958).

RESEARCH REFERENCES

Am. Jur. — 18 Am. Jur. 2d, Cooperative Associations, § 29 et seq.

22-2618. Purchasing business of other associations, persons, firms or corporations — Payment — Stock issued. — Whenever an association organized hereunder with preferred capital stock, shall purchase the stock or any property, or any interest in any property of any person, firm, or corporation or association, it may discharge the obligations so incurred, wholly or in part, by exchanging for the acquired interest, shares of its preferred capital stock to an amount which at par value would equal a fair market value of the stock or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock or interest purchased shall be equivalent to payment in cash for the shares of stock issued. [1921, ch. 124, § 18, p. 299; I.C.A., § 22-2018.]

22-2619. Annual reports. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section, which § 22-2019, was repealed by S.L. 2004, ch. comprised 1921, ch. 124, § 19, p. 298; I.C.A. 106, § 2.

22-2620. Conflicting laws not to apply. — Any provisions of law which are in conflict with this chapter shall not be construed as applying to the associations herein provided for. [1921, ch. 124, § 20, p. 298; I.C.A., § 22-2020.]

JUDICIAL DECISIONS

Cited in: Idaho Wool Mktg. Ass'n v. Mays, 80 Idaho 365, 330 P.2d 337 (1958).

22-2621. Interest in other corporations or associations. — An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock, and engaged in preserving, drying, processing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing, or selling of the agricultural products handled by the association, or the by-products thereof. If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association or to any other person and such legal warehouse receipts shall be considered as adequate collateral to the extent of the current value of the commodity represented thereby. In case such warehouse is licensed and bonded under the laws of this state or the United States, its warehouse receipt shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association. [1921, ch. 124, § 21, p. 298; I.C.A., § 22-2021.]

22-2622. Contracts and agreements with other associations. — Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements and contracts, and arrangements with any other cooperative corporation, association or associations, formed in this or in any other state, for the cooperative and more economical carrying on of its business, or any part or parts thereof. Any two (2) or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same methods, means and agencies for carrying on and conducting their respective businesses. [1921, ch. 124, § 22, p. 298; I.C.A., § 22-2022.]

22-2622A. Consolidation and merger agreements — Voting requirements. — A consolidation or merger of associations organized hereunder shall be effective if the agreement therefor is approved by a two-thirds (2/3) vote of those present and voting at a regularly called meeting of members, providing notice of the substance of the proposed agreement is in the notice of meeting, and provided further, a quorum is present as provided

by the bylaws of each organization voting upon such consolidation or merger. The members of the associations may vote by mail if permitted by the bylaws of said voters' associations, but not by proxy, and the votes by mail shall also be considered in determining the quorum. The failure of any member to vote or a negative vote on consolidation or merger as provided herein shall not entitle those failing to vote or voting in the negative to payment for his shares or other interests or have the value of his shares or other interests appraised, but said members [member's] shares or other interests shall be transferred to and invested in the surviving or new corporation without further act or deed. [I.C., § 22-2622A, as added by 1963, ch. 42, § 1, p. 191.]

STATUTORY NOTES

Compiler's Notes. — The bracketed word "member's" was inserted by the compiler.

22-2623. Association heretofore organized may adopt provisions of chapter. — Any corporation or association organized under previously existing statutes, may by a majority vote of its stockholders or members be brought under the provisions of this chapter by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors, upon forms supplied by the corporation commissioner, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by the provisions of this chapter. Articles of incorporation shall be filed as required in section 22-2608, [Idaho Code,] except that they shall be signed by the members of the board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation. [1921, ch. 124, § 23, p. 298; I.C.A., § 22-2023.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler.

22-2624. Inducing breach of marketing contract — Spreading false reports about finances or management — Penalties. — Any person or persons or any corporation whose officers or employees knowingly induces or attempts to induce any member or stockholder of an association organized hereunder to breach his marketing contract with the association, or who maliciously and knowingly spreads false reports about the finances or management thereof shall be guilty of a misdemeanor and subject to a fine of not less than \$100 and not more than \$500 for such offense and shall be liable to the association aggrieved in a civil suit in the penal sum of \$500 for each offense. [1921, ch. 124, § 24, p. 298; I.C.A., § 22-2024.]

22-2625. Separability. — If any section of this chapter shall be declared unconstitutional for any reason, the remainder of the chapter shall not be affected thereby. [1921, ch. 124, § 25, p. 298; I.C.A., § 22-2025.]

22-2626. Application of general corporation laws. — The provisions of the general corporation laws of this state as they apply to nonprofit corporations, and all powers and rights thereunder, shall apply to the associations organized hereunder, except where such provisions are in conflict with or inconsistent with the express provisions of this chapter. [1921, ch. 124, § 26, p. 298; I.C.A., § 22-2026; am. 1978, ch. 308, § 1, p. 771.]

STATUTORY NOTES

Cross References. — Business corporation act, § 30-1-101 et seq.

22-2627. Classification of directors. — When the board of directors of an association shall consist of five (5) or more members, in lieu of electing the whole number of directors annually, the articles of incorporation or by laws may provide that the directors be divided into either two (2) or three (3) classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of members after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two (2) classes, or until the third succeeding annual meeting, if there be three (3) classes. No classification of directors shall be effective prior to the first annual meeting of members. [I.C., § 22-2627, as added by 1980, ch. 127, § 1, p. 285.]

STATUTORY NOTES

Prior Laws. — Former § 22-2627, which comprised S.L. 1921, ch. 124, § 27, p. 298; I.C.A., § 22-2027, was repealed by S.L. 1978, ch. 308, § 2.

22-2628. Filing fees. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section which comprised S.L. 1921, ch. 124, § 28, p. 298; I.C.A., § 22-2028, was repealed by S.L. 1978, ch. 308, § 2.

CHAPTER 27

SOIL CONSERVATION DISTRICTS

SECTION.

22-2701, 22-2702. [Null and Void.]
22-2703 — 22-2713. [Repealed.]
22-2714. Payments of federal aid to various counties by state controller.

SECTION.

22-2715. Short title.
22-2716. Legislative determination and declaration of policy.
22-2717. Definitions.

SECTION.

- 22-2718. State soil conservation commission.
- 22-2719. Creation of soil conservation districts.
- 22-2720. Consolidation of or deletion from and addition to new or existing districts.
- 22-2721. Election, appointment, qualifications and tenure of supervisors. [Effective until January 1, 2011.]
- 22-2721. Election, appointment, qualifications and tenure of supervisors. [Effective January 1, 2011.]
- 22-2722. Powers of districts and supervisors.
- 22-2723. Cooperation between districts.
- 22-2724. State agencies to cooperate.
- 22-2725. Discontinuance of districts. [Effective until January 1, 2011.]
- 22-2725. Discontinuance of districts. [Effective January 1, 2011.]
- 22-2726. Funds or assistance provided by

SECTION.

- county from county general fund.
- 22-2727. Allocation of funds to districts.
- 22-2728, 22-2729. [Repealed.]
- 22-2730. Resource conservation and range-land development fund created.
- 22-2731. Allocation of fund.
- 22-2732. Loans from fund — Application — Approval — Repayment.
- 22-2733. Grants from state soil conservation commission general fund — Application — Approval — Grant agreement.
- 22-2734. Cost-share from state soil conservation commission general fund — Application — Approval.
- 22-2735. Payments by the state soil conservation commission — Rules — Approval of attorney general — Audit of payments.

22-2701, 22-2702. Legislative intent — Definitions. [Null and Void.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised IC., §§ 22-2701, 22-2702, as added by 1997, ch. 259, §§ 1 and 2, p. 739, on January 1, 2003, expired and became null and void pursuant to § 4 of S.L. 1997, ch. 259.

22-2703 — 22-2713. Soil Conservation Districts Law of 1939. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised S.L. 1939, ch. 200, §§ 1-13, p. 380; am. 1953, ch. 247, § 1, p. 385; I.C., § 22-2705A, as added by 1953, ch. 52, § 1, p. 69; I.C., § 22-2706A, as added by 1953, ch. 44, § 1, p. 62, were repealed by S.L. 1957, ch. 218, § 13, p. 476.

22-2714. Payments of federal aid to various counties by state controller. — The state controller is hereby authorized and directed to draw his warrant in favor of the counties to whom payment should be made pursuant to the Act of Congress of July 24, 1946 (60 Stat. 642, 33 U.S.C.A. 701-C-3 [33 U.S.C. § 701c-3]) and forward the same to the treasurer of the county to which such funds are allocated under the terms of the aforementioned federal statute, to be by the treasurer of said county deposited in the public school fund of said county. [1953, ch. 157, § 1, p. 252; am. 1994, ch. 180, § 19, p. 420.]

STATUTORY NOTES

Cross References. — State controller, § 67-1001 et seq.
Compiler's Notes. — The bracketed insertion was added by the compiler to correct the federal citation.
Effective Dates. — Section 241 of S.L.

1994, ch. 180 provided: "This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994

to change the name of the state auditor to state controller." Since the constitutional amendment was adopted, the amendment of this section by S.L. 1994, ch. 180, § 19 was effective January 2, 1995.

22-2715. Short title. — This act may be known and cited as the soil conservation district law. [1957, ch. 218, § 1, p. 476.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1957, ch. 218, compiled as §§ 22-2715 and 22-2717 to 22-2725.

22-2716. Legislative determination and declaration of policy. —

(1) It is the determination of the state of Idaho that:

(a) Forest lands, rangelands and agricultural lands maintained in a healthy condition are a legitimate land use contributing to the economic, social and environmental well-being of the state and its citizens;

(b) It is essential to the general welfare of all citizens of this state that multiple use conservation improvements be implemented on a broader scale on both public and private lands;

(c) Due to numerous economic and practical issues relating to the improvements of individual tracts of land, both public and private resource conservation improvements, projects and programs of the nature contemplated by this chapter would enhance the economic productivity and environmental quality of the state; and

(d) It is sound public policy for the state of Idaho to provide for accounts to finance loans, grants, cost-share funding and tax incentives to the end that forest lands, rangelands and agricultural lands within the state can provide the greatest benefit to all concerned.

(2) It is the intent of the state of Idaho to provide a means by which funds, including federal, state, private and other moneys, can be obtained and utilized for the accelerated development of water quality programs, multiple use forest land, rangeland, and agricultural land conservation improvements in the state, and to provide that these improvements, projects and programs be locally planned, coordinated and implemented through statutory provisions pertaining to soil conservation districts, the state soil conservation commission, appropriate state and federal agencies, and the owners and operators of privately owned lands.

(3) It is in the best interest of the state of Idaho:

(a) To emphasize nonregulatory, science-based technical assistance, incentive-based financial programs and informational and educational programs at the local level;

(b) To maintain, preserve, conserve and rehabilitate forest lands, rangelands and agricultural lands to assure the protection and productivity of the state's natural resources;

(c) That soil conservation districts, as governmental subdivisions, and the state soil conservation commission, as a state agency, are the primary

entities to provide assistance to private landowners and land users in the conservation, sustainment, improvement and enhancement of Idaho's natural resources;

(d) To establish policies for cooperative working relationships between local soil conservation districts, the state soil conservation commission, local, state and federal agencies and public and private groups to plan, develop and implement conservation goals and initiatives with local landowners and land users;

(e) That soil conservation districts and the state soil conservation commission lead nonregulatory efforts to conserve, sustain, improve and enhance Idaho's private and state lands and to provide assistance to private landowners and land users to plan, develop and implement conservation plans addressing soil, water, air, plant and animal resources. Technical, financial and educational assistance to landowners and land users is vital to that effort; and

(f) That the state soil conservation commission provide support to soil conservation districts in the wise use and enhancement of soil, water and related resources.

(4) It is the policy of the state of Idaho:

(a) To provide appropriate tax policies and program mechanisms that provide incentives for private landowners and land users to voluntarily manage forest lands, rangelands and agricultural lands in a manner that promotes conservation;

(b) That the health, safety and general welfare of the people of this state can be greatly enhanced by providing nonregulatory opportunities to landowners and land users in order to increase the ability of such landowners and land users to readily understand and plan for local, state and federal natural resource requirements and opportunities through technological innovation and processes;

(c) To enhance natural resource productivity in order to promote a strong natural resource sector, reduce unintended adverse effects of resource development and use, protect individual and community health and safety and encourage stewardship;

(d) That conservation plan implementation shall include best management practices implemented according to the standards and specifications developed by the United States department of agriculture natural resources conservation service (NRCS) as designated by the agricultural pollution abatement plan. Those practices shall include, but not be limited to: irrigation water management systems; prescribed grazing; forest stand improvement; establishment of grass, trees and shrubs to reduce wind and water erosion; promotion of sound community development; protection of water and air resources from agricultural nonpoint sources of impairment; maintenance, restoration or enhancement of wetlands and fish and wildlife habitat; protection of upstream watersheds from flood risk; and protection of watersheds from the effects of chronic water shortages and risks; and

(e) That all conservation programs authorized pursuant to this chapter shall deliver services fairly and equitably, strengthen the conservation

district delivery system, provide timely science-based information and provide conservation information and educational programs and experiences to youth and adults. [I.C., § 22-2716, as added by 2003, ch. 107, § 2, p. 334.]

STATUTORY NOTES

Cross References. — State soil conservation commission, § 22-2718. prising S.L. 1957, ch. 218, § 2, p. 476, was repealed by S.L. 2003, ch. 107, § 1.

Prior Laws. — Former § 22-2716, com-

22-2717. Definitions. — Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context:

(1) “Agency of this state” includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(2) “Agricultural pollution abatement plan” or “ag plan” means the document developed by the state soil conservation commission and approved by the commission and the department of environmental quality, that provides appropriate technical, programmatic, informational and educational processes, guidelines and policies for addressing agricultural pollution.

(3) “Agriculture” or “department of agriculture” means an executive department of state government created in section 22-101, Idaho Code.

(4) “Best management practices” or “BMPs” means practices, techniques, or measures developed or identified by the designated agency and identified in the state water quality management plan which are determined to be a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.

(5) “Commission” or “state soil conservation commission” means the agency created in section 22-2718, Idaho Code.

(6) “Conservation plan” means a description of identified natural resource issues and a specific schedule of implementation of component practices necessary to resolve those specific resource issues as agreed upon by the landowner.

(7) “Designated agency” is as defined in section 39-3602, Idaho Code.

(8) “District,” “conservation district,” “soil conservation district,” or “soil and water conservation district” means a governmental subdivision(s) of this state, and a public body corporate and politic, organized in accordance with the provisions of this act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(9) “Due notice” means notice published at least twice, with an interval of at least seven (7) days between the two (2) publication dates, in a newspaper or other publication of general circulation within the appropriate area, or if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally.

At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjournment dates.

(10) "Eligible applicant" means an individual agricultural owner, operator, partnership, corporation, conservation district, irrigation district, canal company or other agricultural or grazing interest.

(11) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivisions, agency, or instrumentality, corporate or otherwise, of either of them.

(12) "Idaho association of soil conservation districts (IASCD)" means an incorporated, nongovernmental entity representing all soil conservation districts in Idaho.

(13) "Idaho OnePlan" means a computer-based system for improving efficiency and effectiveness of natural resource planning by landowners and land users.

(14) "Landowner" or "owner" includes any person, firm, or corporation who shall hold title to any lands lying within a district organized under the provisions of this chapter. A buyer on contract, who is the occupier of land, shall be construed as landowner.

(15) "Land user" means any entity with a lease, permit or similar business agreement with a landowner to implement, manage or utilize such land for activities related to use of the land.

(16) "Natural resources conservation service" or "NRCS" means the agency governed by the provisions of 16 U.S.C. section 590a through 590d and 590f.

(17) "Nominating petition" means a petition filed under the provisions of section 22-2721, Idaho Code, to nominate candidates for the office of supervisor of a soil conservation district.

(18) "Participant" means an individual agricultural owner, operator, partnership, private corporation, conservation district, irrigation district, canal company, or other agricultural or grazing interest approved by the commission or an individual agricultural owner, operator, partnership, or private corporation approved for implementation of conservation improvements, projects, or the water quality program for agriculture.

(19) "Petition" means a petition filed under the provisions of subsection A. of section 22-2719, Idaho Code, for the creation of a district.

(20) "Project sponsor" means a conservation district, irrigation district, canal company, or other agricultural or grazing interest, as determined appropriate by the commission, that enters into a conservation improvement or water quality project agreement with the commission.

(21) "Qualified elector" means any person who is qualified to vote pursuant to the requirements of section 34-104, Idaho Code.

(22) "Riparian land" means the beds of streams, the adjacent vegetation communities and the land thereunder, which are predominately influenced by their association with water and are privately owned.

(23) "Specifications" means the materials, operations and procedures necessary to obtain the desired standards of construction and installation.

(24) "Standards" means the minimum limits of technical excellence of a component practice for its planning, design and construction.

(25) "State" means the state of Idaho.

(26) "Supervisor" means one (1) of the members of the governing body of a district elected or appointed in accordance with the provisions of this act.

(27) "Total maximum daily load" is as defined in section 39-3602, Idaho Code.

(28) "United States" or "agencies of the United States" includes the United States of America, the natural resources conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America. [1957, ch. 218, § 3, p. 476; am. 1982, ch. 254, § 1, p. 646; am. 1995, ch. 118, § 7, p. 417; am. 1997, ch. 180, § 2, p. 498; am. 2000, ch. 160, § 2, p. 404; am. 2003, ch. 107, § 3, p. 334.]

STATUTORY NOTES

Cross References. — State soil conservation commission, § 22-2718.

For Idaho association of soil conservation districts, see <http://iascd.state.id.us>.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-2715.

22-2718. State soil conservation commission. — (1) There is hereby established and created in the department of agriculture of the state of Idaho the state soil conservation commission which shall in cooperation with the director of the department of agriculture perform all functions conferred upon it by this chapter. The soil conservation commission shall be a nonregulatory agency. The commission shall consist of five (5) members appointed by the governor, but no more than three (3) members shall be a member of the same political party. The term of office of each commission member shall be five (5) years; except that upon July 1, 1967, the governor shall appoint one (1) member for a term of one (1) year, one (1) member for a term of two (2) years, one (1) member for a term of three (3) years, one (1) member for a term of four (4) years and one (1) member for a term of five (5) years. From and after the initial appointment the governor shall appoint a member of the commission to serve in office for a term of five (5) years commencing upon July 1 of that year. A vacancy which occurs in an unexpired term shall be filled for its remainder by the governor's appointment. Any commissioner may be removed during his term of office by the governor. Any commissioner so removed shall have notice of the same in writing, specifying the reasons for the removal. Each vacancy on the commission shall be filled by appointment by the governor. Such appointments shall be confirmed by the senate. The commission may invite the state conservationist of the United States department of agriculture natural resources conservation service, the president of the Idaho association of soil conservation districts and the dean of the college of agriculture of the university of Idaho or his designated representative to serve as nonvoting advisory members of the commission. The commission shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules as may be necessary for the execution of its functions under this chapter.

(2) The director of the department of agriculture shall appoint the administrator of the soil conservation commission from persons recommended by the soil conservation commission. The state soil conservation commission may employ such technical experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The commission may call upon the attorney general of the state for such legal services as it may require. It shall have authority to delegate to its chairman, to one (1) or more of its members, or to one (1) or more agents or employees, such powers and duties as it may deem proper. It shall be supplied with suitable office accommodations, and shall be furnished with the necessary supplies and equipment. Upon request of the commission, for the purpose of carrying out any of its functions, the supervising officer of any state agency, or of any state institution of learning shall insofar as may be possible under available appropriation, and having due regard to the needs of the agency to which the request is directed, assign or detail to the commission members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the commission may request.

(3) The commission shall designate its chairman, and may from time to time, change such designation. A majority of the commission shall constitute a quorum, and the concurrency of a majority in any matter within their duties shall be required for its determination. The chairman and members of the commission shall be compensated as provided by section 59-509(h), Idaho Code. The commission shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

(4) In addition to the duties and powers hereinafter conferred upon the state soil conservation commission, it shall have the following responsibilities:

(a) To offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.

(b) To keep the supervisors of each of the several districts organized under the provisions of this chapter informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

(c) To coordinate the progress of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation.

(d) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts.

(e) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts in areas where their organization is desirable.

(f) To provide for the establishment and encouragement of the "Idaho OnePlan" as a primary computer-based conservation planning process for

all natural resource concerns. Establishment and encouragement will be accomplished through an executive group and steering committee both containing private, state and federal representation. The information provided by those using the "Idaho OnePlan" shall be deemed to be trade secrets, production records or other proprietary information and shall be kept confidential and shall be exempt from disclosure pursuant to section 9-340D, Idaho Code.

(5) In addition to other powers, functions and duties of soil conservation districts and the state soil conservation commission provided in this chapter, the commission shall have the following additional powers, functions and duties:

(a) The commission shall conduct, in cooperation with appropriate federal and state agencies and the owners and operators of privately owned forest lands, rangelands and agricultural lands in this state, conservation improvements on or in respect to these lands for the purposes of implementing conservation systems to conserve and improve natural resource conditions;

(b) The commission shall assist and advise soil conservation districts and other entities in implementing the conservation improvements, projects, and the water quality program for agriculture. To the extent that there are available general funds, the commission shall provide for grants and cost-share opportunities and, as legislatively designated, utilize the resource conservation and rangeland development fund for loans for conservation improvements. Provided however, that the commission shall determine whether general or resource conservation and rangeland development funds are available before approving any conservation improvements, projects, and cost-share opportunities and, after having made such determination, shall enter into the necessary contracts for implementation;

(c) The state soil conservation commission shall be the agency responsible for the administration of funds accruing to the resource conservation and rangeland development fund and for all general funds appropriated as a separate and distinct action of the legislature to implement the powers, functions and duties of soil conservation districts and the commission; and

(d) The commission shall promulgate such rules as are necessary to carry out the purposes of this chapter. [1957, ch. 218, § 4, p. 476; am. 1967, ch. 28, § 1, p. 48; am. 1971, ch. 100, § 1, p. 215; am. 1974, ch. 17, § 2, p. 308; am. 1980, ch. 247, § 10, p. 582; am. 1989, ch. 109, § 1, p. 250; am. 1997, ch. 180, § 3, p. 498; am. 2000, ch. 160, § 3, p. 404; am. 2003, ch. 107, § 4, p. 334.]

STATUTORY NOTES

Cross References. — Directors of watershed improvement district, giving notice of election, § 42-3706.

Dissolution of watershed improvement districts, § 42-3717.

Idaho resource conservation and rangeland development fund, § 22-2730.

Watershed improvement districts, creation and organization, § 42-3705.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-2715.

For Idaho association of soil conservation districts, see <http://iascd.state.id.us>.

Effective Dates. — Section 75 of S.L. 1974, ch. 17 provided the act should take effect on and after July 1, 1974.

JUDICIAL DECISIONS**Disclosure.**

Two nutrition management plans (NMP) of certain feedlots were subject to disclosure because they were public records that were not exempt; however, two other NMPs that

were filed via a state computer system were not subject to disclosure because they were exempt. *Idaho Conservation League, Inc. v. Idaho State Dep't of Agric.*, 143 Idaho 366, 146 P.3d 632 (2006).

22-2719. Creation of soil conservation districts. — A. Any twenty-five (25) owners of land lying within the limits of the territory proposed to be organized into a district may file a petition with the state soil conservation commission asking that a soil conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

- (1) The proposed name of said district;
- (2) That there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the territory described in the petition;
- (3) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate;
- (4) A request that the state soil conservation commission duly define the boundaries for such district; that a referendum be held within the territory so defined on the question of the creation of a soil conservation district in such territory; and that the commission determine that such a district be created.

Where more than one (1) petition is filed covering parts of the same territory, the state soil conservation commission may consolidate all of any such petitions.

B. Within thirty (30) days after such petition has been filed with the state soil conservation commission, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such district, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this chapter, and upon all questions relevant to such inquiries. All owners of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given the hearing shall be adjourned and the due notice of further hearing shall be given throughout the entire area considered for inclusion in the district, and such further hearing held. After such hearing, if the commission shall determine upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need in the interest of the public health, safety and welfare, for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define by metes and bounds or by legal subdivi-

sions, the boundaries of such district. In making such determination and in defining such boundaries, the commission shall give due weight and consideration to the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to the existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization under the provisions of this chapter, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislature determinations set forth in section 22-2716, Idaho Code. The territory to be included within such boundaries need not be contiguous. If the commission shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six (6) months shall have expired from the date of the denial of such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon.

C. After the commission has made and recorded a determination that there is need, in the interest of the public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil conservation districts in this chapter is administratively practicable and feasible. To assist the commission in the determination of such administrative practicability and feasibility, it shall be the duty of the commission, at the next election held after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum, subject to the provisions of section 34-106, Idaho Code, within the proposed district upon the proposition of the creation of the district, and to cause notice of such election to be given as provided in section 34-1406, Idaho Code. The question shall be submitted by ballots upon which the words "For creation of a soil conservation district of the lands below described and lying in the county(ies) of and" and "Against creation of a soil conservation district of the lands below described and lying in the county(ies) of and" shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the commission. All qualified electors who own lands or reside within the proposed district shall be eligible to vote in said referendum.

D. The commission shall pay all expenses for the issuance of such notice and the conduct of such hearings and election, and shall supervise the conduct of such hearings and election. It shall issue appropriate regulations governing the conduct of such hearings and election. No informalities in the

conduct of the election or in any matter relating thereto shall invalidate the election or the result thereof if notice thereof shall have been given substantially as herein provided and the election shall have been fairly conducted.

E. The commission shall publish the result of the election and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the commission shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the commission shall determine that the operation of such district is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination the commission shall give due regard and weight to the attitudes of the owners of lands lying within the defined boundaries, the number of landowners and qualified electors eligible to vote in the election who shall have voted, the proportion of the votes cast in the election in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the landowners of the proposed district, the probable expense of carrying on erosion control and other conservation operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determination set forth in section 22-2716, Idaho Code; provided, however, that the commission shall not have authority to determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the election upon the proposition of creation of the district shall have been cast in favor of the creation of such district.

F. If the commission shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two (2) supervisors to act, with the three (3) supervisors elected as provided hereinafter, as the governing body of the district. Such district shall be a governmental subdivision of this state and a public body corporate and politic, upon the taking of the following proceedings:

The two (2) appointed supervisors shall present to the secretary of state an application signed by them which shall set forth (and such application need contain no detail other than the mere recitals): (1) that a petition for the creation of the district was filed with the state conservation commission pursuant to the provisions of this chapter, and that the proceedings specified in this chapter were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this chapter; and that the commission has appointed them as supervisors; (2) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office; (3) the term of office of each of the supervisors; (4) the name which is proposed for the district; and (5) the location of the principal office of the supervisors of

the district. The application shall be subscribed and sworn to by each of the said supervisors before an officer authorized by the laws of this state to take and certify oaths, who shall certify upon the application that he personally knows the supervisors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence.

The application shall be accompanied by a statement by the state soil conservation commission, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid; that the commission did duly determine that there is need, in the interest of the public health, safety and welfare, for a soil conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and an election held on the question of the creation of such district, and that the result of the election showed a sixty per cent (60%) majority of the votes cast in the election to be in favor of the creation of the district; that thereafter the commission did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the commission.

The secretary of state shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office.

If the secretary of state shall find that the name proposed for the district is identical with that of any other soil conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the state soil conservation commission which shall thereupon submit to the secretary of state a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name free of such defects, the secretary of state shall record the application and statement with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed, and recorded, as herein provided, the district shall constitute a governmental subdivision of this state and a public body corporate and politic. The secretary of state shall make and issue to the said supervisors a certificate under the seal of the state, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the state soil conservation commission as aforesaid, but in no event shall they include any area included within the boundaries of another soil conservation district organized under the provisions of this act except as provided in section 22-2720, Idaho Code.

G. After six (6) months shall have expired from the date of entry of a determination by the state soil conservation commission that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this chapter.

H. Petitions for including additional territory within an existing district may be filed with the state soil conservation commission and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusion. The commission shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this chapter for petitions to organize a district. Where the total number of landowners in the area proposed for inclusion shall be less than twenty-five (25), the petition may be filed when signed by a two-thirds (2/3) majority of the owners of such area, and in such case no election need be held. In elections upon petitions for such inclusion, all owners of land and qualified electors lying within the proposed additional area shall be eligible to vote.

I. Incorporated cities, not already included within a district, may be included by presentation of a request of the district approved by the governing body along with a request of the city approved by the mayor and council, to the state soil conservation commission. The commission shall consider and act on such joint request at the earliest convenience. If the joint request is denied, the commission shall so notify the district and city in writing and state the reasons for such denial. After six (6) months shall have expired from the date of denial of such joint request, a subsequent joint request may again be made. If the joint request is approved, the commission shall then cause the necessary papers to be filed with the secretary of state. This shall include an amended legal description of the boundaries of the total district. [1957, ch. 218, § 5, p. 476; am. 1973, ch. 164, § 1, p. 310; am. 1995, ch. 118, § 8, p. 417.]

STATUTORY NOTES

Cross References. — State soil conservation commission, § 22-2718.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-2715.

The words enclosed in parentheses so appeared in the law as enacted.

22-2720. Consolidation of or deletion from and addition to new or existing districts. — 1. Petitions for consolidating two (2) or more existing districts or for deleting territory from one or more existing districts and adding the deleted territory to one or more existing districts or incorporating the deleted territory into a new district or districts may be filed with the state soil conservation commission on such forms as may be prescribed by the state soil conservation commission.

2. The petitions provided for in subsection 1 of this section shall be signed by twenty-five (25) landowners in the area proposed to be consolidated or the area proposed to be deleted plus the district or districts to which it is to be added or the territory which is to be included in a new district or districts, as the case may be. Provided, however, that if two-thirds (2/3) of the landowners of all such territory total less than twenty-five (25), then, in that event, such lesser number of signatures will suffice for the petition.

3. Within thirty (30) days after receipt of such a petition, the state soil conservation commission shall cause due notice of hearing on the matter to be given in all of the areas concerned.

4. At the close of the hearing hereinbefore provided for, the state soil conservation commission must make and record the following determinations:

a. Whether or not, in the opinion of the commission, the proposal set forth by the petition would serve the public health, safety and welfare.

b. Whether or not, in the opinion of the commission, the proposal set forth by the petition is administratively practicable and feasible.

5. If either or both of the determinations made under subsection 4 of this section are in the negative, the matter is closed. Provided, however, that after six (6) months have expired from the date of such determination, a new petition may be filed involving substantially the same proposals.

6. If both of the determinations made under subsection 4 of this section are in the affirmative and if the proposal involves the consolidation of two (2) or more existing districts or if the proposal involves the deletion of territory from one or more districts and the addition of that territory to another existing district or districts, then the commission shall proceed to effect the change as per the commission's determinations hereinbefore referred to.

The state soil conservation commission shall effect the change here referred to by filing with the secretary of state a sworn statement of a member of the commission stating:

a. The name of the district or districts which are consolidated, if any,

b. The name of the district or districts from which the territory is deleted or added, if any, and

c. A description of the boundaries of the consolidated district or of the territory remaining in the district or districts deleted from and the district or districts added to, according to the commission's determination hereinbefore referred to.

From and after the time of filing of such statement with the secretary of state, the changes will be effective.

If the name of a district formed by the consolidation of two (2) or more existing districts differs from that of either of the consolidated districts, the secretary of state shall issue and record a new certificate of organization of said district.

7. The office of any district supervisor is hereby declared to be vacant, when, after the deletion of territory, such district supervisor is no longer a landowner within the district deleted from.

8. If both of the determinations made under subsection 4 of this section are in the affirmative and if the proposal involves the addition of territory deleted [deleted] from one or more existing districts to other territory thus forming a new district, a referendum shall be held and other procedures followed as in cases involving the original formation of a district where no existing district is involved. In such a case, due notice shall be given in the area which may comprise the new district.

9. If a new district is formed under the procedure prescribed in subsection 8 of this section, part of the area which is composed of an old district, the state soil conservation commission shall cause to be filed with the secretary of state a sworn statement of a member of the commission stating:

a. The name of the district or districts deleted from, and

b. A description of the boundaries of the territory remaining in the district or districts deleted from.

From and after the time of filing of such statement with the secretary of state, the change in the boundaries of the existing districts shall be effective. [1957, ch. 218, § 6, p. 476.]

STATUTORY NOTES

Cross References. — State soil conservation commission, § 22-2718.

“deleted” in subsection 8 was inserted by the compiler.

Compiler’s Notes. — The bracketed word

22-2721. Election, appointment, qualifications and tenure of supervisors. [Effective until January 1, 2011.] — The governing body of the district shall consist of five (5) supervisors, elected or appointed as provided in this chapter. Elections shall be conducted pursuant to the provisions of this section and the uniform district election law, chapter 14, title 34, Idaho Code. If at any time the supervisors of a district deem it necessary, they may request permission from the state soil conservation commission to increase the number of supervisors to seven (7). Upon receipt of such a request in writing, signed by all five (5) supervisors, stating a valid reason for such need, the commission shall grant permission. The additional supervisors shall then be appointed as outlined in subparagraph C. of this section until such time as regular district elections for two (2) supervisors in each district. At that time those districts having seven (7) supervisors shall then elect four (4) supervisors for four (4) year terms. The two (2) supervisors appointed by the commission shall be persons who are by training and experience qualified to perform the specialized services which will be required of them in the performance of their duties. All supervisors shall be landowners or farmers of the district where they are elected or appointed.

A. Within thirty (30) days after the date of issuance by the secretary of state of a certificate of organization of a soil conservation district, nominating petitions may be filed with the state soil conservation commission to nominate candidates for supervisors of each district. The soil conservation commission, unless it has contracted with the county clerk to conduct the election, shall designate an individual to act as the election official. If contracted to do so, the county clerk shall act as the election official. The election official shall have authority to extend the time within which nominating petitions may be filed. No such nominating petition shall be accepted by the election official unless it shall be subscribed by not less than five (5) persons who are qualified electors owning land or residing within the boundaries of the district. The election official shall give due notice of an election to be held, subject to the provisions of section 34-106, Idaho Code, for the election of three (3) supervisors for the district. The names of all nominees on behalf of whom such nominating petitions have been filed within the time herein designated, shall appear arranged in the alphabetical order of the surnames, upon ballots, with a square before each name and directions to insert a mark in the square before any three (3) names to indicate the voter’s preference. The three (3) candidates who shall receive

the largest number, respectively, of the votes cast in such election shall be the elected supervisors for such district. The commission shall pay all the expenses of such election, which shall be supervised and conducted by the election official.

B. All elections in districts, excluding the first election as provided in subparagraph A. of this section, shall be conducted by the district supervisors of the districts involved who shall designate an individual to be the election official, or the county clerk if contracted for that purpose. Such election shall be held on the first Tuesday succeeding the first Monday of November in each even-numbered year. Such elections shall be in compliance with the provisions of chapter 14, title 34, Idaho Code, and shall be supervised and conducted by the election official. The cost of conducting such elections shall be borne by the district involved. The election official shall certify to the state soil conservation commission the names of the elected supervisors. The state soil conservation commission shall issue certificates of election to each elected supervisor so certified. The state soil conservation commission may authorize each district to contract with the county clerk or county clerks of the county or counties in which the district is located to conduct the election for the soil conservation district. If a district election is conducted by a county clerk, the county clerk must provide a ballot for the district election, and must provide a process that allows only qualified electors of the district to vote in that district's election.

In any election for supervisor, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that the number of qualified candidates who have been nominated is equal to the number of supervisors to be elected, it shall not be necessary for the candidates to stand for election, and the board of supervisors shall declare such candidates elected as supervisors, and the state soil conservation commission shall immediately make and deliver to such persons certificates of election.

C. In any election for supervisors of a soil conservation district, if after the expiration of the date for filing written nominations it appears that only one (1) qualified candidate has been nominated for each position to be filled and no declaration of intent has been filed by a write-in candidate as provided in subparagraph D. of this section, it shall not be necessary to hold an election, and the election official shall, no later than seven (7) days before the scheduled date of the election, declare such candidate elected as supervisor, and the state soil conservation commission shall immediately make and deliver to such person a certificate of election.

D. No write-in vote for supervisor shall be counted unless a declaration of intent has been filed with the election official indicating that the person making the declaration desires the office and is legally qualified to assume the duties of supervisor if elected as a write-in candidate. The declaration of intent shall be filed not later than twenty-five (25) days before the day of election.

E. The supervisors shall designate a chairman and may, from time to time, change such designation. The term of office of each supervisor shall be four (4) years commencing on the first day of January next following election, except that the two (2) supervisors who are first appointed shall be

designated to serve for terms of two (2) years. A supervisor shall hold office until a qualified successor has been elected or appointed. Vacancies shall be filled for the unexpired term. The selection of successors to fill an unexpired term, or for a full term shall be made by a vote of the majority of the supervisors duly qualified and acting at the time the vacancy shall arise and the supervisors shall certify the name of the appointed supervisor to the state soil conservation commission who shall issue a certificate of such appointment.

F. A majority of the supervisors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A supervisor shall be entitled to expenses, including travel expense, necessarily incurred in the discharge of duties. A supervisor shall receive no compensation for services from regular district funds, county funds authorized in section 22-2726, Idaho Code, or state funds authorized in section 22-2727, Idaho Code.

In the event the district has a special project, approved by the state soil conservation commission, making project funds available from federal or other sources, a supervisor may receive compensation not to exceed thirty-five dollars (\$35.00) per day plus actual and necessary expenses from project funds for services directly related to the project.

The supervisors may employ a secretary, technical experts, and such other officers, agents, and employees, permanent and temporary as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require or may employ their own counsel and legal staff. The supervisors may delegate to their chairman, to one (1) or more supervisors, or to one (1) or more agents, or employees, such powers and duties as they may deem proper. The supervisors shall furnish to the state soil conservation commission, upon request, copies of such ordinances, rules, orders, contracts, forms and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; they shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, and orders issued or adopted; and shall provide for independent financial audits in accordance with the provisions of section 67-450B, Idaho Code, with the exception of the provisions of subsection (2)(d) of section 67-450B, Idaho Code. The governing body of a district whose annual budget from all sources does not exceed fifty thousand dollars (\$50,000) may elect to have its financial statements reviewed on a biennial basis. Biennial reports of review shall include a review of each fiscal year since the previous review report. Any supervisor may be removed by the state soil conservation commission upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of a municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on

all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county. [1957, ch. 218, § 7, p. 476; am. 1963, ch. 30, § 1, p. 171; am. 1973, ch. 59, § 1, p. 97; am. 1978, ch. 280, § 1, p. 679; am. 1986, ch. 179, § 1, p. 469; am. 1990, ch. 3, § 1, p. 4; am. 1995, ch. 118, § 9, p. 417; am. 1995, ch. 256, § 1, p. 837; am. 1997, ch. 180, § 4, p. 498; am. 1999, ch. 78, § 1, p. 222; am. 2000, ch. 4, § 2, p. 5; am. 2008, ch. 383, § 1, p. 1053.]

STATUTORY NOTES

Cross References. — State soil conservation commission, § 22-2718.

Amendments. — The 2008 amendment, by ch. 383, in the next-to-last paragraph, in the first sentence, substituted “independent financial audits in accordance with the provisions of section 67-450B, Idaho Code, with the exception of the provisions of subsection (2)(d) of section 67-450B, Idaho Code” for “an an-

nual audit of the accounts of receipts and disbursements,” and added the second and third sentences.

Compiler’s Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 22-2721.

Effective Dates. — Section 2 of S.L. 1978, ch. 280 declared an emergency. Approved March 29, 1978.

22-2721. Election, appointment, qualifications and tenure of supervisors. [Effective January 1, 2011.] — The governing body of the district shall consist of five (5) supervisors, elected or appointed as provided in this chapter. Elections shall be conducted pursuant to the provisions of this section and the uniform district election law, chapter 14, title 34, Idaho Code. If at any time the supervisors of a district deem it necessary, they may request permission from the state soil conservation commission to increase the number of supervisors to seven (7). Upon receipt of such a request in writing, signed by all five (5) supervisors, stating a valid reason for such need, the commission shall grant permission. The additional supervisors shall then be appointed as outlined in subsection C. of this section until such time as regular district elections for two (2) supervisors in each district. At that time those districts having seven (7) supervisors shall then elect four (4) supervisors for four (4) year terms. The two (2) supervisors appointed by the commission shall be persons who are by training and experience qualified to perform the specialized services which will be required of them in the performance of their duties. All supervisors shall be landowners or farmers of the district where they are elected or appointed.

A. Within thirty (30) days after the date of issuance by the secretary of state of a certificate of organization of a soil conservation district, nominating petitions may be filed with the state soil conservation commission to nominate candidates for supervisors of each district. The county clerk shall conduct the election for the district and shall be the election official for the district. The election official shall have authority to extend the time within which nominating petitions may be filed. No such nominating petition shall be accepted by the election official unless it shall be subscribed by not less than five (5) persons who are qualified electors owning land or residing within the boundaries of the district. The election official shall give due notice of an election to be held, subject to the provisions of section 34-106, Idaho Code, for the election of three (3) supervisors for the district. The names of all nominees on behalf of whom such nominating petitions have

been filed within the time herein designated, shall appear upon ballots, with directions to choose three (3) names to indicate the voter's preference. The three (3) candidates who shall receive the largest number, respectively, of the votes cast in such election shall be the elected supervisors for such district. The commission shall pay all the expenses of such election, which shall be supervised and conducted by the election official.

B. All elections in districts shall be conducted by the county clerk. Such election shall be held on the first Tuesday succeeding the first Monday of November in each even-numbered year. Such elections shall be in compliance with the provisions of chapter 14, title 34, Idaho Code, and shall be supervised and conducted by the county clerk. The cost of conducting such elections shall be borne by the county that conducted the election. The county clerk shall certify to the state soil conservation commission the names of the elected supervisors. The state soil conservation commission shall issue certificates of election to each elected supervisor so certified. The county clerk or county clerks of the county or counties in which the district is located shall conduct the election for the soil conservation district, and the county clerk must provide a ballot for the district election, and must provide a process that allows only qualified electors of the district to vote in that district's election.

In any election for supervisor, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that the number of qualified candidates who have been nominated is equal to the number of supervisors to be elected, it shall not be necessary for the candidates to stand for election, and the board of supervisors shall declare such candidates elected as supervisors, and the state soil conservation commission shall immediately make and deliver to such persons certificates of election.

C. In any election for supervisors of a soil conservation district, if after the expiration of the date for filing written nominations it appears that only one (1) qualified candidate has been nominated for each position to be filled and no declaration of intent has been filed by a write-in candidate as provided in subsection D. of this section, it shall not be necessary to hold an election, and the county clerk shall, no later than seven (7) days before the scheduled date of the election, declare such candidate elected as supervisor, and the state soil conservation commission shall immediately make and deliver to such person a certificate of election.

D. No write-in vote for supervisor shall be counted unless a declaration of intent has been filed with the county clerk indicating that the person making the declaration desires the office and is legally qualified to assume the duties of supervisor if elected as a write-in candidate. The declaration of intent shall be filed not later than twenty-five (25) days before the day of election.

E. The supervisors shall designate a chairman and may, from time to time, change such designation. The term of office of each supervisor shall be four (4) years commencing on the first day of January next following election, except that the two (2) supervisors who are first appointed shall be designated to serve for terms of two (2) years. A supervisor shall hold office until a qualified successor has been elected or appointed. Vacancies shall be

filled for the unexpired term. The selection of successors to fill an unexpired term, or for a full term shall be made by a vote of the majority of the supervisors duly qualified and acting at the time the vacancy shall arise and the supervisors shall certify the name of the appointed supervisor to the state soil conservation commission who shall issue a certificate of such appointment.

F. A majority of the supervisors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A supervisor shall be entitled to expenses, including travel expense, necessarily incurred in the discharge of duties. A supervisor shall receive no compensation for services from regular district funds, county funds authorized in section 22-2726, Idaho Code, or state funds authorized in section 22-2727, Idaho Code.

In the event the district has a special project, approved by the state soil conservation commission, making project funds available from federal or other sources, a supervisor may receive compensation not to exceed thirty-five dollars (\$35.00) per day plus actual and necessary expenses from project funds for services directly related to the project.

The supervisors may employ a secretary, technical experts, and such other officers, agents, and employees, permanent and temporary as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require or may employ their own counsel and legal staff. The supervisors may delegate to their chairman, to one (1) or more supervisors, or to one (1) or more agents, or employees, such powers and duties as they may deem proper. The supervisors shall furnish to the state soil conservation commission, upon request, copies of such ordinances, rules, orders, contracts, forms and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; they shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, and orders issued or adopted; and shall provide for independent financial audits in accordance with the provisions of section 67-450B, Idaho Code, with the exception of the provisions of subsection (2) (d) of section 67-450B, Idaho Code. The governing body of a district whose annual budget from all sources does not exceed fifty thousand dollars (\$50,000) may elect to have its financial statements reviewed on a biennial basis. Biennial reports of review shall include a review of each fiscal year since the previous review report. Any supervisor may be removed by the state soil conservation commission upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of a municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county. [1957, ch. 218, § 7,

p. 476; am. 1963, ch. 30, § 1, p. 171; am. 1973, ch. 59, § 1, p. 97; am. 1978, ch. 280, § 1, p. 679; am. 1986, ch. 179, § 1, p. 469; am. 1990, ch. 3, § 1, p. 4; am. 1995, ch. 118, § 9, p. 417; am. 1995, ch. 256, § 1, p. 837; am. 1997, ch. 180, § 4, p. 498; am. 1999, ch. 78, § 1, p. 222; am. 2000, ch. 4, § 2, p. 5; am. 2008, ch. 383, § 1, p. 1053; am. 2009, ch. 341, § 4, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, rewrote subsections A. and B. to the extent that a detailed comparison is impracticable; and in subsections C. and D., substituted “county clerk” for “election official.”

Compiler’s Notes. — For this section effective until January 1, 2011, see the preceding section, also numbered § 22-2721.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

22-2722. Powers of districts and supervisors. — A soil conservation district organized under the provisions of this chapter shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this chapter:

(1) To conduct surveys, investigations, and research relating to the character of soil erosion, floodwater and sediment damages, for the conservation, development, utilization, and disposal of water and the prevention and control measures, and works of improvement needed, to publish results of such surveys, investigations, or research, and to disseminate information concerning such preventive and control measures and works of improvement; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies or with the United States or any of its agencies;

(2) To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner of such lands or the necessary rights of interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil-blowing and soil-washing may be prevented and controlled; works of improvement for flood prevention and the conservation, development, utilization, and disposal of water may be carried out;

(3) To carry out preventive and control measures and works of improvement for flood prevention or the conservation, development, utilization, and disposal of water within the districts including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and other appropriate best management practices, on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner of such lands or the necessary rights or interests in such lands;

(4) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid, to any agency, governmental or otherwise, or any owner of lands within the district, in carrying on erosion control and prevention operations and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district, subject to such conditions as the supervisors may deem necessary to advance the purpose of this chapter;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein and all such property shall be exempt from taxation for state, county and municipal purposes; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this chapter;

(6) To make available, on such terms as it shall prescribe, to landowners within the district, agricultural and engineering machinery or equipment, as will assist such landowners to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for flood prevention or the conservation, development, utilization, and disposal of water;

(7) To construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter;

(8) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention or the conservation, development, utilization, and disposal of water within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specifications of engineering operations, method of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land, and to publish such plans and information and bring them to the attention of occupiers of lands within the district;

(9) To take over, by purchase, lease, or otherwise, and to administer, any soil conservation, flood prevention, erosion control, or erosion prevention project, or combination thereof, located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies; or of this state or any of its agencies, any soil conservation, flood prevention, erosion control, or erosion prevention project, or combination thereof, within its boundaries; to act as agent for the United States, or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil-conservation, flood-prevention, erosion-control, or erosion-prevention project, or combination thereof, within its boundaries; to accept donations, gifts, and contributions

in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and use or expend such moneys, services, material, or other contributions in carrying on its operations;

(10) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules not inconsistent with this chapter, to carry into effect its purposes and powers;

(11) As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in moneys, services, materials, or otherwise to any operations conferring such benefits, and may require landowners to enter into and perform such agreements or covenants as to permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages thereon;

(12) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state. [1957, ch. 218, § 8, p. 476; am. 2003, ch. 107, § 5, p. 334.]

22-2723. Cooperation between districts. — The supervisors of any two (2) or more districts organized under the provisions of this act may cooperate with one another in the exercise of any or all powers conferred in this act. [1957, ch. 218, § 9, p. 476.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-2715.

22-2724. State agencies to cooperate. — Agencies of this state which shall have jurisdiction over, or be charged with the administration of, any state-owned lands, and of any county, or other governmental subdivision of the state, which shall have jurisdiction over, or charged with the administration of, any county-owned or other publicly owned lands, lying within the boundaries of any district organized hereunder, shall cooperate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this act. The supervisors of such district shall be given free access to enter and perform work upon such publicly owned lands. [1957, ch. 218, § 10, p. 476.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-2715.

22-2725. Discontinuance of districts. [Effective until January 1, 2011.] — At any time after five (5) years after the organization of a district under the provisions of this chapter, any twenty-five (25) owners of land lying within the boundaries of such district may file a petition with the state soil conservation commission praying that the operations of the district be terminated and the existence of the district discontinued. The commission may conduct such public meetings, and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within sixty (60) days after such petition has been received by the commission it shall give due notice of the holding of an election, subject to the provisions of section 34-106, Idaho Code, and shall supervise the election, and issue appropriate regulations governing such election as are consistent with chapter 14, title 34, Idaho Code, the question to be submitted by ballots upon which the words "For terminating the existence of the (name of the soil conservation district to be here inserted)" shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All qualified electors who own land or reside within the proposed district shall be eligible to vote in said election. No informalities in the conduct of the election or in any matters relating thereto shall invalidate the election or the result thereof if notice thereof shall have been given substantially as herein provided and the election shall have been fairly conducted.

The commission shall publish the result of the election and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the commission shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny this petition. If the commission shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the commission shall give due regard and weight to the attitudes of the owners of lands lying within the district, the number of landowners eligible to vote in the election who shall have voted, the proportion of the votes cast in the election in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the landowners of the district, the probable expense of carrying on such erosion-control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in section 22-2716, Idaho Code, provided, however, that the commission shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the election shall have been cast in favor of the continuance of such district.

Upon receipt from the state soil conservation commission of a certificate that the commission has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the

provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the state treasury. The supervisors shall thereupon file an application duly verified, with the secretary of state for the discontinuance of such district, and shall transmit with such application the certificate of the state soil conservation commission setting forth the determination of the commission that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The secretary of state shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The state soil conservation commission shall be substituted for the district or supervisors as party to such contracts.

The state soil conservation commission shall not entertain petitions for the discontinuance of any district nor conduct elections upon such petitions nor make determinations pursuant to such petitions in accordance with the provisions of this chapter, more often than once in five (5) years. [1957, ch. 218, § 11, p. 476; am. 1995, ch. 118, § 10, p. 417.]

STATUTORY NOTES

Cross References. — State soil conservation commission, § 22-2718.

Compiler's Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 22-2725.

The words enclosed in parentheses so appeared in the law as enacted.

Section 12 of S.L. 1957, ch. 218 read: "If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances, shall not be affected thereby."

Section 13 of S.L. 1957, ch. 218 read: "Insofar as any of the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act, shall be controlling. Chapter 27, title 22, Idaho Code excepting section 22-2714, Idaho Code is hereby repealed and chapters 44, 52 and 247 of the Idaho Session Laws of 1953 are hereby repealed."

Effective Dates. — Section 14 of S.L. 1957, ch. 218 declared an emergency. Approved March 15, 1957.

22-2725. Discontinuance of districts. [Effective January 1, 2011.]

— At any time after five (5) years after the organization of a district under the provisions of this chapter, any twenty-five (25) owners of land lying within the boundaries of such district may file a petition with the state soil conservation commission praying that the operations of the district be terminated and the existence of the district discontinued. The commission may conduct such public meetings, and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within sixty (60) days after such petition has been received by the commission, it shall give due notice to the county clerk of the holding of an election, subject to the

provisions of section 34-106, Idaho Code, and the county clerk shall supervise the election, and issue appropriate regulations governing such election as are consistent with chapter 14, title 34, Idaho Code, the question to be submitted by ballots upon which the words "For terminating the existence of the (name of the soil conservation district to be here inserted)" shall appear, with a square before each proposition and a direction to mark the ballot as the voter may favor or oppose discontinuance of such district. All qualified electors who reside within the proposed district shall be eligible to vote in said election. No informalities in the conduct of the election or in any matters relating thereto shall invalidate the election or the result thereof if notice thereof shall have been given substantially as herein provided and the election shall have been fairly conducted.

The commission shall publish the result of the election and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the commission shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny this petition. If the commission shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the commission shall give due regard and weight to the attitudes of the owners of lands lying within the district, the number of residents eligible to vote in the election who shall have voted, the proportion of the votes cast in the election in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the landowners of the district, the probable expense of carrying on such erosion-control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in section 22-2716, Idaho Code, provided, however, that the commission shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the election shall have been cast in favor of the continuance of such district.

Upon receipt from the state soil conservation commission of a certificate that the commission has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the state treasury. The supervisors shall thereupon file an application duly verified, with the secretary of state for the discontinuance of such district, and shall transmit with such application the certificate of the state soil conservation commission setting forth the determination of the commission that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full

accounting of such properties and proceeds of the sale. The secretary of state shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The state soil conservation commission shall be substituted for the district or supervisors as party to such contracts.

The state soil conservation commission shall not entertain petitions for the discontinuance of any district nor conduct elections upon such petitions nor make determinations pursuant to such petitions in accordance with the provisions of this chapter, more often than once in five (5) years. [1957, ch. 218, § 11, p. 476; am. 1995, ch. 118, § 10, p. 417; am. 2009, ch. 341, § 5, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, in the first paragraph, in the third sentence, twice inserted “the county clerk” or similar language, substituted “direction to mark the ballot” for “direction to insert an X mark in the square before one or the other of said propositions,” and in the fourth sentence, deleted “own land or” preceding “reside”; in

the second paragraph, substituted “residents” for “landowners” in the last sentence.

Compiler’s Notes. — For this section as effective until January 1, 2011, see the preceding section, also numbered § 22-2725.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

22-2726. Funds or assistance provided by county from county general fund. — In those counties of Idaho wherein all or a substantial part of the county has been created and is operating as a soil conservation district or districts under the provisions of chapter 27, title 22, section 22-2719, Idaho Code, or any amendment thereto, the board of county commissioners may, from time to time, at their discretion and upon request of the supervisors of such soil conservation districts provide in their budget a sufficient amount of money from the county general fund for allocation to the districts to be used by the districts for any purposes authorized by law, or in lieu of such allocation the county commissioners at their discretion may assign or hire an employee or employees of the county to assist the supervisors in the performance of the work of their office. The duties of such employee or employees shall be under the direct supervision of the supervisors of each soil conservation district. [1963, ch. 14, § 1, p. 149; am. 1969, ch. 217, § 1, p. 711; am. 1976, ch. 17, § 1, p. 48; am. 1984, ch. 16, § 1, p. 18; am. 1990, ch. 358, § 1, p. 967.]

22-2727. Allocation of funds to districts. — A public hearing shall be held by the Idaho soil conservation commission on or before June 15 of each year and twenty (20) days’ written notice of such hearing shall be given to each Idaho soil conservation district and to all other persons requesting notice of such hearing. At the hearing the Idaho soil conservation commission shall consider the needs of each Idaho soil conservation district and shall base its request for state funds for the Idaho soil conservation districts upon the budgets, budget requests, district programs and work plans, and work load analysis of the various soil conservation districts.

All funds appropriated by the state for the various Idaho soil conservation districts shall be appropriated to the Idaho soil conservation commission and shall be allocated equally to the various Idaho soil conservation districts on the basis of the criteria established in the preceding paragraph.

Funds appropriated to the Idaho soil conservation commission for distribution to soil conservation districts shall be allocated equally to the various soil conservation districts in a sum not to exceed five thousand dollars (\$5,000) per district. All funds appropriated to the soil conservation commission for distribution to soil conservation districts in excess of five thousand dollars (\$5,000) per district shall be allocated to the various soil conservation districts in a sum not to exceed twice the amount of funds or services allocated to each district by the county commissioners and funds or services allocated to each district by authorized officials or other local units of government or organizations.

The Idaho soil conservation commission shall adopt all rules and regulations necessary to carry out the purposes of this section. [I.C., § 22-2727, as added by 1969, ch. 217, § 2, p. 711; am. 1984, ch. 16, § 2, p. 18; am. 1990, ch. 358, § 2, p. 967; am. 1991, ch. 80, § 1, p. 181.]

STATUTORY NOTES

Cross References. — State soil conservation commission, § 22-2718.

ch. 358 declared an emergency. Approved April 10, 1990.

Effective Dates. — Section 3 of S.L. 1990,

22-2728, 22-2729. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — The following sections were repealed by S.L. 2003, ch. 107, § 6, effective July 1, 2003:

22-2728. Declaration of policy. [1985, ch. 116, § 1, p. 239.]

22-2729. Designation of soil conservation districts and soil conservation commission — Additional powers. [1985, ch. 116, § 1, p. 239.]

22-2730. Resource conservation and rangeland development fund created. — (1) There is hereby created in the state treasury a fund to be known as the Idaho resource conservation and rangeland development fund, which shall consist of all moneys which may be appropriated to it by the legislature or made available to it from federal, private, or other sources. The state treasurer is directed to invest all unobligated moneys in the fund. All interest and other income accruing from such investments shall accrue to the fund. The state soil conservation commission may expend from the fund such sums as it shall deem necessary for any of the conservation improvements, projects and programs provided for under this chapter under such terms and conditions provided for in its rules and the water quality program for agriculture.

(2) The state soil conservation commission shall establish a priority list for conservation improvements, projects and the water quality program for agriculture. The priority list shall be used as the method for allocation of funds loaned under this chapter. [I.C., § 22-2730, as added by 1985, ch. 116,

§ 1, p. 239; am. 1992, ch. 270, § 4, p. 836; am. 1999, ch. 137, § 3, p. 386; am. 2003, ch. 107, § 7, p. 334.]

STATUTORY NOTES

Cross References. — State soil conservation commission, § 22-2718.

22-2731. Allocation of fund. — The Idaho resource conservation and rangeland development fund shall be allocated for use:

(1) By the state soil conservation commission to eligible applicants for conservation improvements which it deems to be “in the public interest” in such amounts as are necessary for the implementation of conservation measures identified in a conservation plan;

(2) By the commission to eligible applicants for the purpose of conservation improvements on rangelands, agricultural lands, and riparian lands, which will provide environmental enhancement to soil, water, wildlife, and related resources;

(3) By the commission for the purpose of implementing conservation improvements, projects and the water quality program for agriculture. [I.C., § 22-2731, as added by 1985, ch. 116, § 1, p. 239; am. 1992, ch. 270, § 5, p. 836; am. 1999, ch. 137, § 4, p. 386; am. 2003, ch. 107, § 8, p. 334.]

STATUTORY NOTES

Legislative Intent. — Section 5 of S.L. 1992, ch. 296 read: “It is legislative intent that the appropriations of moneys from the Water Pollution Control Account and the Resource Conservation and Rangeland Development Loan Account in Section 2 of this act,

specifically supersede the provisions of Section 39-3606 and Section 22-2731, Idaho Code, respectively.”

Cross References. — State soil conservation commission, § 22-2718.

22-2732. Loans from fund — Application — Approval — Repayment. — (a) Eligible applicants may file an application with the local soil conservation district or the state soil conservation commission for a loan from the fund for the purpose of financing conservation improvement cost. Such application shall be filed in such a manner, and shall be in such form, and be accompanied by such information as may be prescribed by the commission. Any such application filed with the district or the commission under the provisions of this act shall:

(1) Describe the nature and purposes of the improvements or projects.

(2) Set forth or be accompanied by a conservation plan approved by the local soil conservation district or the commission that identifies the conservation improvements, or projects, together with such technical and economic feasibility data and estimated costs as may be required by the commission.

(3) State whether money other than that for which application is made under this act will be used for improvement costs, and whether such money is available or has been sought for this purpose.

(4) Show that the applicant holds or can acquire title to all lands or has necessary easements and rights-of-way for the improvements.

(5) Show the proposed project is feasible from a technical standpoint and economically justified.

(b) Within sixty (60) days of receipt of an application, the local soil conservation district or the commission shall review and evaluate, and if it deems necessary, investigate aspects of the proposed improvements. As part of such investigation, the district or the commission shall determine whether the plan for development of the conservation improvements is satisfactory. If the district or the commission determines the plan is unsatisfactory, it shall return the application to the applicant and may make such recommendations to the applicant as are considered necessary to make the plan satisfactory. If the district or the commission determines the plan and application are satisfactory, it shall be considered for funding.

(c) The commission may approve a loan for conservation improvements if after review, evaluation, and investigation if necessary, [it] finds that:

- (1) The applicant is qualified and responsible;
- (2) There is reasonable assurance that the borrower can repay the loan;
- (3) That money in the resource conservation and rangeland development fund is available for the loan.

(d) If the commission approves a loan, the applicant shall execute a promissory note for repayment to the account of money loaned therefrom, together with interest not to exceed six percent (6%) annually as determined by the commission. The note shall further provide that repayment of the loan, together with interest thereon, shall commence not later than two (2) full years from the date the note is signed. Repayment shall be completed within the time period specified by the commission not to exceed fifteen (15) years, except that the commission may extend the time for making repayment in event of emergency or hardship. Such agreement shall also provide for such assurance of, and security for, repayment of the loan as are considered necessary by the commission.

(e) Upon approval of the loan and securing all necessary documents, the commission will make available, in approved form, project or contract funding.

(f) If an applicant fails to comply with the repayment contract, the interest in the improvement may be conveyed to a successor upon approval by the commission, which may contract with the qualified successor in interest of the original obligor for repayment of the loan, together with interest thereon, and for succession to its rights and obligation in any contract with the commission. [I.C., § 22-2732, as added by 1985, ch. 116, § 1, p. 239; am. 1992, ch. 270, § 6, p. 836; am. 1999, ch. 62, § 1, p. 164; am. 1999, ch. 137, § 5, p. 386.]

STATUTORY NOTES

Cross References. — Idaho resource conservation and rangeland development fund, § 22-2730.

State soil conservation commission, § 22-2718.

Amendments. — This section was amended by two 1999 acts which appear to be

compatible and have been compiled together.

The 1999 amendment, by ch. 62, § 1, in subsection (a)(4), substituted "rights-of-way" for "rights of way" and deleted subsection (c)(4) as it appears in the bound volume.

The 1999 amendment, by ch. 137, § 5, substituted "fund" for "account" and inserted

"or the commission" following conservation district throughout the section; in subsection (a), in the first sentence, inserted "or the state soil conservation commission" following "local soil conservation district", deleted "; provided, however, that" preceding "Any such application"; in subsection (a)(1) added "or projects" at the end of the subsection; in subsection (a)(2), substituted "or the commission that" for "which" following "local soil conservation district", inserted "or projects," following "conservation improvements", substituted "technical" for "engineering" preceding "and economic feasibility data", deleted "of construction" following "estimated costs"; in subsection (a)(4) substituted "rights-of-way" for "rights of way"; in subsection (a)(5), substituted "a technical" for "an engineering"; in subsection (b), deleted "all" preceding "aspects

of the proposed improvements", deleted "the district" preceding "may make such recommendations", deleted "is" following "determines the plan", inserted "and application are" preceding "satisfactory", substituted "be considered" for "assign a priority to the application and forward the application to the commission with a recommendation"; deleted subsection (c)(4) as it appears in the bound volume; added new subsection (e) and redesignated former subsection (e) as (f).

Compiler's Notes. — The term "this act", at the end of the introductory paragraph in subsection (a), refer to S.L. 1985, ch. 116, which is codified as §§ 22-2730 to 22-2732.

The bracketed insertion in subsection (c) was added by the compiler to make the sentence more clear.

22-2733. Grants from state soil conservation commission general fund — Application — Approval — Grant agreement. — (1) Eligible applicants or participants may file an application with the local soil conservation district or the state soil conservation commission for a grant from the state soil conservation commission general fund for the purpose of financing conservation improvements, projects, and implementation of the water quality program for agriculture. Such application shall be filed in such a manner and shall be in such form, and be accompanied by such information as may be prescribed by the commission; provided, however, that any such application filed with the district or the commission under the provisions of this section shall:

- (a) Describe the nature and purpose of the improvements or conservation plan implementation project.
- (b) Set forth or be accompanied by an improvement project plan approved by the local soil conservation district or the commission that identifies the practices to be applied, together with such technical and economic feasibility data and estimated costs as may be required by the commission.
- (c) State whether money other than that for which application is made under this section will be used for improvement project or conservation plan implementation costs, and whether such money is available or has been sought for this purpose.
- (d) Show that the applicant or participant holds or can acquire title to all lands or has necessary easements and rights-of-way to implement the project plan.

(2) The commission and local soil conservation district will keep each other informed of grant applications received. Within thirty (30) days of receipt of an application, the local soil conservation district or the commission shall review and evaluate and, if deemed necessary, investigate all aspects of the proposed improvement, project or conservation plan. As part of such investigation, the district or the commission shall determine whether the project plan is satisfactory. If the district or the commission determines that the plan is unsatisfactory, it shall return the application to

the applicant or participant and the district or the commission may make such recommendations to the applicant or participant as are considered necessary to make the plan satisfactory. If the commission determines either the plan or a plan revised pursuant to recommendation of the district or commission is satisfactory, it shall be considered for funding.

(3) The commission may approve a grant if after review, evaluation, and investigation if necessary, it finds that:

- (a) The applicant or participant is qualified and responsible;
- (b) The improvement, project, or conservation plan demonstrates public benefits; and
- (c) That money in the state soil conservation commission general fund is available for the grant.

(4) If the commission approves a grant, the applicant or participant shall enter into an agreement covering the grant offer and acceptance of the grant for implementing the improvement, project, or conservation plan. The agreement shall be improvement, project, or conservation plan specific. The terms and conditions shall be those specified by the commission.

(5) Upon approval of the grant and securing all necessary documents, the commission will make available, in the approved form, project or contract funding. [I.C., § 22-2733, as added by 1992, ch. 270, § 7, p. 839; am. 1999, ch. 137, § 6, p. 386; am. 2003, ch. 107, § 9, p. 334.]

STATUTORY NOTES

Cross References. — State soil conservation commission, § 22-2718.

22-2734. Cost-share from state soil conservation commission general fund — Application — Approval. — (1) Eligible applicants or participants may file an application with the local soil conservation district or the state soil conservation commission for a cost-share contract or project from the state soil conservation commission general fund for the purpose of financing agricultural, grazing or other conservation improvements, projects or implementation of the water quality program for agriculture. Such application shall be filed in such a manner and shall be in such form and be accompanied by such information as may be prescribed by the commission; provided however, that any such application filed with the district or the commission under the provisions of this section shall:

- (a) Describe the nature and purposes of the improvements and projects requiring cost-sharing;
- (b) Set forth or be accompanied by a plan that identifies the conservation improvements or projects, together with such technical and economic feasibility data and estimated costs as may be required by the commission;
- (c) State whether money other than that for which application is made under this section will be used for costs, and whether such money is available or has been sought for this purpose;
- (d) Show the proposed project is feasible from a technical standpoint and is economically justified.

(2) The commission and the local soil conservation district will keep each other informed of cost-share applications received. Within thirty (30) days of receipt of an application, the local soil conservation district or the commission shall review and evaluate and, if deemed necessary, investigate all aspects of the proposed contract or project. As part of such investigation, the district or the commission shall determine whether the plan for development of the conservation improvements or projects is satisfactory. If the district or the commission determines the plan is unsatisfactory, it shall return the application to the applicant or participant and the district or the commission may make such recommendations to the applicant or participant as are considered necessary to make the application satisfactory. When the commission determines either the application or an application revised pursuant to recommendation of the district or commission is satisfactory, it shall be considered for funding.

(3) The commission may approve a cost-share contract to an applicant or participant for conservation projects and improvements if, after review, evaluation and investigation, it finds that:

- (a) The applicant or participant is qualified and responsible;
- (b) The conservation improvement or project demonstrates public benefit;
- (c) There is reasonable assurance that the applicant or participant will adhere to contract terms; and
- (d) Money is available in the state soil conservation commission general fund for cost-share.

(4) Upon approval of the cost-share contract or cost-share grant, and securing of all necessary documents, the commission will make funding available. [I.C., § 22-2734, as added by 1999, ch. 137, § 7, p. 386; am. 2003, ch. 107, § 10, p. 334.]

STATUTORY NOTES

Cross References. — State soil conservation commission, § 22-2718. refer to S.L. 1999, ch. 137 compiled as §§ 22-2728 — 22-2735 and §§ 39-3624 — 39-3627.

Compiler's Notes. — The words "this act"

22-2735. Payments by the state soil conservation commission — Rules — Approval of attorney general — Audit of payments. —

(1) The commission may make payments not to exceed the estimated reasonable cost of an eligible improvement, project, or plan.

(2) The commission may, in the name of the state of Idaho, enter into contracts with approved applicants, and any such approved applicants may enter into a contract with the commission concerning eligible improvements, projects or plans. Any such contract may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following provisions:

- (a) An estimate of the reasonable cost of the improvements, projects, or plans as determined by the commission;
- (b) The terms under which the commission may unilaterally terminate the contract and/or seek repayment from the application [applicant] of

sums already paid pursuant to the contract for noncompliance by the applicant with the terms and conditions of the contract and the provisions of this chapter;

(c) An agreement by the applicant binding for the life of the eligible improvements, projects or plans:

- (i) To develop water quality plans for landowners and provide payments to landowners for installation of best management practices;
- (ii) To determine payment rates in conjunction with the commission for best management practices;
- (iii) To establish a method for administration and provisions for technical assistance to landowners in conjunction with the commission;
- (iv) To allow the state to make payments up to the estimated reasonable cost for best management practices installation, technical assistance and project administration of an eligible project;
- (v) To develop and to secure the approval of the commission of plans for operation of the eligible project;
- (vi) To ensure that the local matching share of the cost is provided as applicable;
- (vii) To assure an adequate level of landowner participation and application of best management practices to ensure water quality goals are met.

(3) The commission may enter into contracts to provide technical assistance to applicants that have entered agreements pursuant to this chapter. Any such contract may include such provisions agreed upon by the parties thereto, and shall include, in substance, the following provisions:

- (a) An estimate of the reasonable cost of technical assistance;
- (b) The terms under which the commission may unilaterally terminate the contract, and/or seek repayment of sums paid pursuant to the contract, for noncompliance by the applicants with the terms and conditions of the contract, the provisions of this chapter, or rules adopted pursuant thereto.

(4) The commission may enter into contracts and establish procedures to be followed in applying for eligible improvements, projects and plans herein authorized as shall be necessary for the effective administration of the water quality program for agriculture.

(5) All contracts entered into pursuant to this section shall be subject to approval by the attorney general as to form. All payments by the state pursuant to such contracts shall be made after audit and upon warrant as provided by law on vouchers approved by the (the) director of the department of agriculture.

(6) All grant agreements and contracts previously entered into with the state board of health and welfare, soil conservation districts and the commission pursuant to section 39-3627, Idaho Code, for payments and administration are now to be administered and payments implemented solely by the commission. [I.C., § 22-2735, as added by 1999, ch. 137, § 8, p. 386.]

STATUTORY NOTES

Cross References. — State soil conservation commission, § 22-2718.

Compiler's Notes. — The bracketed insertion in paragraph (2)(b) was added by the compiler to make the sentence more clear.

The word "the" in subsection (5) was enclosed in parentheses by the compiler as surplusage.

CHAPTER 28

HONEY INDUSTRY

SECTION.

- 22-2801. Short title.
- 22-2802. Declaration of policy and purpose of act.
- 22-2803. Definitions.
- 22-2804. Commission, members, appointment and compensation.
- 22-2805. Power to contract.
- 22-2806. Administration, where vested.

SECTION.

- 22-2807. Duties.
- 22-2808. Levy and collection of taxes — Change of tax by referendum — Violations — Penalty.
- 22-2809. Payment of expenses and costs.
- 22-2810. Crediting of funds.
- 22-2811. Publication of registered beekeepers.

22-2801. Short title. — This act may be known as the Honey Industry Act. [1949, ch. 147, § 1, p. 301.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1949, ch. 147, which is compiled as §§ 22-2801 to 22-2807. Probably the refer-

ence should be to "this chapter", being chapter 28, title 22, Idaho Code.

22-2802. Declaration of policy and purpose of act. — It is hereby declared, as a matter of legislative determination, that the honey industry of Idaho is in dire need of concentrated state and national advertising and promotion to increase the consumption of honey; that other states are promulgating advertising and promotion compaigns for the betterment of the honey industry; that honey is an essential food and its use should be placed in name and fact before the housewives of America; that in the interest of public welfare and general prosperity of the people of the state of Idaho, the honey industry and beekeeping in general should be maintained and encouraged so that the many food values of honey and the many pollinating values of the domesticated honey bees may be better understood and greater use thereof made. [1949, ch. 147, § 2, p. 301.]

22-2803. Definitions. — Whenever used or referred to in this act, unless a different meaning clearly appears from the context:

1. The term "commission" means the Idaho honey advertising commission.
2. The term "honey producer" or "beekeeper" means a person, firm or corporation engaged in the art of raising, harboring, keeping or breeding domesticated honey bees either for the purpose of gathering honey or the production of queens and/or packaged bees.
3. "Honey by-products" means items using honey as a base such as creamed honey, whipped honey, or the like. [1949, ch. 147, § 3, p. 301.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-2801.

22-2804. Commission, members, appointment and compensation.

— There is hereby created and established in the department of agriculture an Idaho honey advertising commission to be known and designated as such, and shall be composed of the director of the department and three (3) members, who shall be practical honey producers or beekeepers, appointed by the governor, at the recommendation of a representative group of beekeepers of the state of Idaho. Each member so appointed shall be a resident citizen of the state of Idaho and from the district from which appointed, for a period of five (5) years prior to his appointment, and shall have had active experience in raising honey bees and each member shall have derived the major portion of his income from the production and sale of honey. One (1) member shall be chosen from the district north of the Salmon River; one (1) from the district south of the Salmon River and west of a north-south line bisecting the city of Shoshone and extending from the south boundary of the state of Idaho to the Salmon River; one (1) from the district south of the Salmon River and east of a north-south line bisecting the city of Shoshone and extending from the south boundary of the state of Idaho to the Salmon River. Commission members shall be appointed and serve for a term of three (3) years and until their respective successors are appointed and qualified. The commission shall elect its chairman.

The chairman of the commission may delegate the function of the honey advertising commission to an executive secretary whose function will be subject to the approval of the honey advertising commission. The executive secretary must be a member of the Idaho honey industry association, inc., or its successor organization but need not be a member of the honey advertising commission.

A majority of the members of said commission shall constitute a quorum for the transaction of all business and the carrying out of the duties of said commission. Before entering on the discharge of their duties as members of said commission, each member shall take and subscribe to the oath of office prescribed by the statutes of Idaho.

Each member of the commission shall be compensated as provided by section 59-509(d), Idaho Code. The commission shall meet regularly once each fiscal year at a date established by said commission in its designated business office, and it shall fix the time and place of special meetings as may be deemed necessary by the chairman of the commission. [1949, ch. 147, § 4, p. 301; am. 1974, ch. 13, § 5, p. 138; am. 1974, ch. 142, § 1, p. 1356; am. 1980, ch. 247, § 11, p. 582; am. 1990, ch. 414, § 3, p. 1148.]

STATUTORY NOTES

Effective Dates. — Section 194 of S.L. 1974, ch. 13 provided the act should be in full force and effect on July 1, 1974.

Section 2 of S.L. 1974, ch. 142 provided that the act should take effect from and after July 2, 1974.

22-2805. Power to contract. — The said commission shall have power to contract and be contracted with. [1949, ch. 147, § 5, p. 301.]

22-2806. Administration, where vested. — The administration of this act shall be vested in the Idaho honey advertising commission which shall administer the taxes levied and imposed by this act. [1949, ch. 147, § 6, p. 301.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-2801.

22-2807. Duties. — The commission shall plan and conduct a campaign for honey and honey byproduct advertising, publicity, merchandising, sales promotion and research, including bee research, by contracting with a service of the hereinabove mentioned, or jointly with any university or other state or states of the United States and its territories, or individually. [1949, ch. 147, § 7, p. 301; am. 2006, ch. 87, § 1, p. 257.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 87, substituted "Duties" for "Advertising" in the section heading, and inserted "in-

clude bee research" and "university or" in the section.

22-2808. Levy and collection of taxes — Change of tax by referendum — Violations — Penalty. — (a) There is hereby levied and imposed upon each colony or hive of bees within the state of Idaho on July 1 of each year a continuing annual tax of five cents (5¢) per hive or colony of bees beginning in the year 1970 for the purpose of carrying out the provisions of chapter 28, title 22, Idaho Code. Hobbyist beekeepers, as defined in chapter 25, title 22, Idaho Code, are exempt from taxation under this section. Provided however, that any hobbyist beekeeper who desires to support the efforts of the commission, as set forth in section 22-2807, Idaho Code, and desires to be included in registration lists distributed as authorized under section 22-2811, Idaho Code, may register with the commission for that purpose by remitting an annual registration fee of ten dollars (\$10.00).

(b) The tax may be decreased to not less than three cents (3¢) per hive or colony per year or it may be increased to not more than ten cents (10¢) per hive or colony per year, if approved by a majority of the beekeepers voting in a referendum held for the purpose of determining whether such levy of the tax shall or shall not be changed. If the levy of the tax is changed, the levy of the tax will continue annually at the changed rate until again changed by another referendum. Any resident of Idaho who is a registered Idaho beekeeper with the department of agriculture may vote at such referendum. Any referendum held for the purpose of changing the levy of such tax shall be held at the annual meeting of the Idaho honey industry association or any successor organization to this group.

(c) Notice of the tax provided for in this section shall be mailed no later than June 1 and the tax shall be due and payable on or before July 1 of each year, and it shall be collected by the Idaho department of agriculture and shall forthwith be paid over by the Idaho department of agriculture to the Idaho honey advertising fund.

(d) Said tax shall be a lien upon all apicultural products, equipment, bees and property of the person owning or controlling such bees and shall be prior to all other liens or encumbrances except liens which are declared prior by operation of the statutes of this state.

(e) The Idaho honey advertising commission may promulgate the necessary rules and forms to implement and carry out this section.

(f) Any person who shall violate the provisions of this section or the rules promulgated under it shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than three hundred dollars (\$300) or imprisonment for a period not to exceed ninety (90) days, or both such fine and imprisonment, and all fines collected for violation of this section shall be paid into the Idaho honey advertising fund. [1970, ch. 46, § 1, p. 95; am. 1991, ch. 225, § 1, p. 537; am. 2006, ch. 87, § 2, p. 257.]

STATUTORY NOTES

Cross References. — Idaho honey advertising fund, § 22-2810.

Prior Laws. — Former § 22-2808, which comprised S.L. 1949, ch. 147, § 8, p. 301; am. 1951, ch. 62, § 1, p. 91, was repealed by S.L. 1970, ch. 46, § 2.

Amendments. — The 2006 amendment, by ch. 87, added the second sentence in subsection (a).

22-2809. Payment of expenses and costs. — All expenses and costs incurred in the administration of this act shall be paid out of the Idaho honey advertising fund. The commission shall keep an accurate record of all costs and expenditures and will report the same by publication on October 1st of each year. All expenses and costs incurred and contracted for by the commission in performing its duties under this act shall be paid out of such Idaho honey advertising fund in the following manner: vouchers shall be approved and submitted by the commission chairman to the director or his designated representative of the Idaho department of agriculture for approval and subsequent issuance of a warrant by the state controller. [I.C., § 22-2809, as added by 1951, ch. 62, § 2, p. 91; am. 1974, ch. 13, § 6, p. 138; am. 1994, ch. 180, § 20, p. 420; am. 2003, ch. 32, § 6, p. 115.]

STATUTORY NOTES

Cross References. — Idaho honey advertising fund, § 22-2810.

State controller, § 67-1001 et seq.

Compiler's Notes. — The words "this act" mean S.L. 1951, ch. 62, which is codified as §§ 22-2809 and 22-2810. Probably the reference should be "this chapter", being chapter 28, title 22, Idaho Code.

Effective Dates. — Section 194 of S.L.

1974, ch. 13 provided the act should take effect on and after July 1, 1974.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general

election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 20 of S.L. 1994, ch. 180 became effective January 2, 1995.

22-2810. Crediting of funds. — All moneys which have heretofore been credited to the general fund under the provisions of title 22, chapter 28, Idaho Code, are hereby transferred to the Idaho Honey Advertising Fund. [I.C., § 22-2810, as added by 1951, ch. 62, § 3, p. 91.]

22-2811. Publication of registered beekeepers. — The commission shall make available to any pesticide applicator registered with the department, abatement or pest control district, or university of Idaho county agricultural extension office, a list of beekeepers registered with the commission. The list shall include the names and telephone numbers of the beekeepers, the counties in which they keep bees, and any other information the commission deems necessary to assist in the prevention of accidental poisoning of honeybees. [I.C., § 22-2811, as added by 2006, ch. 87, § 3, p. 257; am. 2007, ch. 188, § 14, p. 548.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 188, deleted “mosquito” preceding “abatement” in the first sentence.

Effective Dates. — Section 15 of S.L. 2007, ch. 188 declared an emergency. Approved March 26, 2007.

CHAPTER 29

BEANS — PROMOTION OF INDUSTRY

SECTION.

22-2901 — 22-2904. [Obsolete.]
 22-2905. The regents of the University of Idaho — Powers and duties.
 22-2906. Cooperation with other agencies.
 22-2907 — 22-2910. [Obsolete.]
 22-2911. Declaration of policy.
 22-2912. Bean commission created.
 22-2913. Executive office.
 22-2914. Definitions.
 22-2915. Administration and enforcement of act.

SECTION.

22-2916. Penalty for tax defaults.
 22-2917. Powers and duties of commission.
 22-2918. Advertising, publicity and sales promotion.
 22-2919. Deposit and disbursement of funds.
 22-2920. Uses for moneys.
 22-2921. Tax levy.
 22-2922. Dealers' records — Tax returns.
 22-2923. Penalty for violations.

22-2901 — 22-2904. [Obsolete.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised S.L. 1949, ch. 178, §§ 1-4, p. 375, were rendered obsolete by the expiration

of the tax and also superseded by the enactment of S.L. 1957, ch. 94 (§§ 22-2911 — 22-2923).

22-2905. The regents of the University of Idaho — Powers and duties. — The regents of the University of Idaho are hereby authorized and directed to establish within the state of Idaho a bean growing experiment station, and in their name to purchase or otherwise acquire, equip, improve, operate, conduct and maintain, a farm, suitable and adapted for growing

beans in connection with and for the purpose of conducting and carrying on experiments and experimental work to improve the quality of beans, to insure the purity of seed beans, and to develop new and better types of beans and methods of bean culture and utilization. Information and results of such experiments and experimental work shall from time to time be made available to and disseminated by bulletins or other suitable means, to all growers of beans and others within the state of Idaho, who may be interested in the same. The bean growing experiment station is authorized to establish such field experiment substations as in the judgment of the regents of the University of Idaho, may be necessary.

The regents of the University of Idaho are empowered and authorized, in their name, to purchase or otherwise acquire, lands and facilities and also accept gifts of land and/or facilities, or other donations as may be made to them for the purposes of this act. [1949, ch. 178, § 5, p. 375.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1949, ch. 178, compiled as §§ 22-2905 and 22-2906.

22-2906. Cooperation with other agencies. — The regents of the University of Idaho, through the bean growing experiment station, are hereby authorized to cooperate with the United States department of agriculture, or any other recognized agencies of the United States, the state of Idaho, or with other states, in the conducting and carrying on of the experiments and experimental work herein provided to be made, and to enter into contracts for this purpose, so as to pay all, or a proportionate amount of the costs of such work as may be deemed best to be undertaken in the interests of the state. [1949, ch. 178, § 6, p. 375.]

22-2907 — 22-2910. [Obsolete.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised S.L. 1949, ch. 178, §§ 7-9, 12, p. 375, were rendered obsolete by the expiration of the tax and also superseded by the enactment of S.L. 1957, ch. 94 (§§ 22-2911 — 22-2923).

22-2911. Declaration of policy. — The production of beans is one of the major agricultural activities of the state of Idaho. Idaho beans are equal, if not superior, to beans grown elsewhere in the United States. However, because the bean industry in this state has failed to adequately advertise, develop and improve the superior quality of Idaho beans on a nationwide scale, this state does not enjoy its fair share of the national bean market. In the interests of the welfare and general prosperity of the people of this state, to avoid further unnecessary losses in the national bean market, and to carry on research into the growth, production and marketing of beans in Idaho, in order that the health-giving qualities and food value of our beans may become well-known throughout the United States, it is the purpose of

this act to provide for and promote national advertising of Idaho beans, and to further provide for comprehensive studies and research analyses into the future production, growing, and marketing of Idaho beans. [1957, ch. 94, § 1, p. 158.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1957, ch. 94, compiled as §§ 22-2911 to 22-2918 and 22-2920 to 22-2923.

22-2912. Bean commission created. — There is hereby created and established in the department of self-governing agencies the Idaho bean commission, hereinafter called the commission. It shall be composed of eight (8) men or women engaged in the bean industry. The commission shall be appointed by the governor, and each member must have been a resident of the state of Idaho for a period of three (3) years immediately prior to his appointment, shall have had active experience in growing, processing or shipping of beans produced in the state of Idaho, and at least four (4) members of the commission shall be growers actually engaged in production of beans, but who are not handlers, dealers or processors. One (1) grower member of the commission shall be appointed from each of the districts provided for by this section. The four (4) remaining members of the commission may be engaged in the processing or shipping of beans, at least one (1) of whom must be engaged in the processing or shipping of snap bean seed. The processor or shipper members of the commission shall be appointed at large, keeping in mind insofar as possible geographic locations representative of the Idaho bean industry. The qualifications for membership on the commission shall continue throughout the respective terms of office of the commissioners. Upon recommendation of organizations of producers and shippers of beans, one (1) grower commissioner shall be appointed from district No. 1, which district shall be composed of the following counties: Adams, Boundary, Bonner, Kootenai, Benewah, Shoshone, Latah, Nez Perce, Clearwater, Lewis, Idaho, Washington, Payette, Gem, Canyon and Ada; one (1) grower commissioner shall be appointed from district No. 2, which district shall be composed of the following counties: Valley, Lemhi, Custer, Boise, Twin Falls, Owyhee and Elmore; one (1) grower commissioner shall be appointed from district No. 3, which district shall be composed of the following counties: Cassia, Oneida, Power, Bannock, Caribou, Bear Lake, Franklin and Minidoka; one (1) grower commissioner shall be appointed from district No. 4, which district shall be composed of the following counties: Camas, Blaine, Gooding, Lincoln, Jerome, Bingham, Bonneville, Butte, Jefferson, Madison, Teton, Fremont and Clark. Commencing on July 1, 1999, the governor shall appoint two (2) members for a one (1) year term, two (2) members for a two (2) year term, two (2) members for a three (3) year term, and two (2) members for a four (4) year term. Thereafter, the governor shall appoint commissioners as their terms expire. Each commissioner shall serve for a term of four (4) years. Each commissioner shall hold office until his successor has been appointed.

A simple majority of members of the commission shall constitute a quorum for the transaction of business and for carrying out the duties of the

commission. All commissioners shall take an oath of office before commencing their duties.

Each member of the commission shall be compensated as provided by section 59-509(l), Idaho Code, provided however, that compensation paid to members of the commission on and after January 1, 1998, shall not be considered salary as defined in section 59-1302, Idaho Code. [1957, ch. 94, § 2, p. 158; am. 1970, ch. 45, § 1, p. 92; am. 1974, ch. 13, § 7, p. 138; am. 1980, ch. 247, § 12, p. 582; am. 1998, ch. 403, § 1, p. 1256; am. 1999, ch. 63, § 1, p. 165.]

STATUTORY NOTES

Effective Dates. — Section 194 of S.L. 1974, ch. 13 provided the act should take effect on and after July 1, 1974.

Section 2 of S.L. 1998, ch. 403 declared an

emergency and provided this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1998. Approved March 25, 1998.

22-2913. Executive office. — The executive office of the commission is hereby established in Ada county. [1957, ch. 94, § 3, p. 158; am. 2001, ch. 183, § 3, p. 613.]

22-2914. Definitions. — As used in this act:

(a) The term “commission” means the Idaho bean commission.

(b) The term “person” means individual, partnership, organization, corporation, association, and/or any other business unit.

(c) The term “beans” means all dry beans sold or intended for human consumption or for seed purposes grown in the state of Idaho.

(d) “Shipment” of beans means loading beans within the state of Idaho in a car, bulk truck, or other conveyance, to be transported for sale or otherwise.

(e) The term “dealer” means and includes any person engaged in the business of buying, receiving, cleaning, or selling beans for profit or remuneration, in this state or another state.

(f) The term “handler” means any person handling beans in the primary channels of trade.

(g) The term “grower” means the actual producer of any beans defined in this act.

(h) “Delivery” means the placing of beans into primary channels of trade when any such beans are sold or delivered for shipment or delivered for canning or processing into by-products.

(i) The term “hundredweight” means each one hundred (100) pound or combination of packages making a hundred (100) pound unit of any shipment of beans based on invoice and/or bill of lading records. [1957, ch. 94, § 4, p. 158; am. 1972, ch. 351, § 1, p. 1038.]

STATUTORY NOTES

Compiler's Notes. — For words “this act”, see Compiler's Notes, § 22-2911.

22-2915. Administration and enforcement of act. — The commission shall prescribe and enforce suitable and reasonable regulations to enforce the provisions of this act, and shall administer the taxes levied and imposed by this act. The commission may at any time send its duly authorized agent or representative to enter upon the premises of any grower, dealer and/or handler of beans, to examine or cause to be examined any books, papers, records or memoranda concerning taxes payable under this act, and to secure other information either directly or indirectly involved in the enforcement of this act. [1957, ch. 94, § 5, p. 158.]

STATUTORY NOTES

Cross References. — Bean commission,
§ 22-2912.

Compiler's Notes. — For words "this act",
see Compiler's Notes, § 22-2911.

22-2916. Penalty for tax defaults. — Any handler, dealer or grower who fails to make collection, file return or pay any tax within the time required by or pursuant to this act shall thereby forfeit to the state a penalty of five per centum (5%) of the amount of tax determined to be due, as provided in this act, plus one per centum (1%) of such amount for each month of delay or fraction thereof after the expiration of the first month after such return was required to be filed or such tax became due; but the commission, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid to the commission and disposed of as provided with respect to moneys derived from the taxes levied and imposed by this act. [1957, ch. 94, § 6, p. 158.]

STATUTORY NOTES

Cross References. — Bean commission,
§ 22-2912.

Compiler's Notes. — For words "this act",
see Compiler's Notes, § 22-2911.

22-2917. Powers and duties of commission. — The powers and duties of the commission shall include the following:

1. To adopt and from time to time alter, rescind, modify and/or amend all proper and necessary rules, regulations and orders for the exercise of its powers and the performance of its duties under this act.

2. To employ and at its pleasure discharge an advertising manager, agents, advertising agencies and such other help as it deems necessary and to outline their powers and duties and fix their compensation.

3. To make in the name of the commission such advertising contracts and other agreements as may be necessary.

4. To keep books, records and accounts of all its doings, which books, records and accounts shall be open to inspection by the state controller at all times.

5. To purchase or authorize the purchase of all office equipment and supplies and to incur all other reasonable and necessary expenses and obligations in connection with and required for properly carrying out the provisions of this act.

6. To define and describe such grade or grades of beans as may be advertised in accordance with the provisions of this act.

7. Whenever and wherever it deems it necessary the commission shall use its offices to prevent any substitution of other beans for Idaho beans and to prevent the misrepresentation or misbranding of Idaho beans at any and all times at any and all points where it discovers the same is being done.

8. To cooperate with the United States department of agriculture and other growers or shippers organizations on a national basis to improve the total consumption of dry beans.

9. To make, conduct or carry on studies and research in connection with the raising and production of "dry edible beans for human consumption" and of "snap bean seed" and for conducting necessary measures for the control of insects known to be detrimental to the production of such beans, bean seed, and their by-products; to disseminate information with respect to such study and research as a part of the commission's publicity and sales promotion activities authorized by this act and to assist, aid and educate growers, dealers and handlers in the raising, production, marketing, and processing of beans and bean seed.

For the accomplishment of such ends with reference to snap bean seed a minimum of twenty percent (20%) of the tax collected shall be placed in a reserve fund to be used for these purposes as required.

The above twenty percent (20%) figure is the amount of tax which is the average accrued from snap bean seed production.

For the accomplishment of such ends the commission is hereby empowered to employ the necessary persons or contract for the performance of required services; to cooperate with any organization of growers in this state, whether organized by authority of law or voluntarily, engaged in carrying on similar activities, and to participate jointly with any such organization, by contract or otherwise, in financing such study and research or paying for the employment of persons or services required or in carrying out projects and programs as herein contemplated. [1957, ch. 94, § 7, p. 158; am. 1994, ch. 180, § 21, p. 420.]

STATUTORY NOTES

Cross References. — Bean commission, § 22-2912.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-2911.

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the

amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 21 of S.L. 1994, ch. 180 became effective January 2, 1995.

22-2918. Advertising, publicity and sales promotion. — The commission shall plan and carry out marketing research, and conduct a continuous campaign for commodity advertising, publicity and sales promotion to increase the consumption of beans and may contract for any advertising, publicity and sales promotion service. To accomplish such purpose the commission shall have power and it shall be the duty of the commission to disseminate information relating to:

(a) Beans and the importance thereof in preserving the public health, the economy thereof in the diet of the people and the importance therein in the nutrition of children;

(b) The manner, method and means used and employed in the production, transportation, marketing and grading of beans, and laws of the state regulating and safeguarding such production, transportation, marketing and grading;

(c) The added cost to the producer and dealer in producing and handling beans to meet the high standards imposed by the state to insure a pure and wholesome product;

(d) The reasons why producers and dealers should receive a reasonable return on their labor and investment;

(e) The problem of furnishing the consumer at all times with an abundant supply of fine quality beans at reasonable prices;

(f) Factors of instability peculiar to the vegetable industry in general, and the bean industry in particular, such as unbalanced production, effect of the weather, influence of consumer purchasing power and price relative to the cost of other items of food in the normal diet of people, all to the end that an intelligent and increasing consumer demand may be created.[;]

(g) The possibilities of increased consumption of Idaho beans;

(h) Such other, further and additional information as shall tend to promote increased consumption of Idaho beans, and as may foster a better understanding and more efficient cooperation between producers, dealers and the consuming public;

(i) Branding, labeling, stenciling, sealing or packaging to promote and use in all ways, to advertise Idaho beans, and to protect their identity as far as possible to the final consumer. [1957, ch. 94, § 8, p. 158.]

STATUTORY NOTES

Cross References. — Bean commission, colon at the end of subdivision (f) was inserted by the compiler.

Compiler's Notes. — The bracketed semi-

22-2919. Deposit and disbursement of funds. — (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one (1) or more separate accounts in the name of the commission in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) No moneys shall be withdrawn or paid out of such accounts except upon order of the commission and upon checks or other orders upon such accounts signed by such member of the commission as the commission designates. The commission shall establish and maintain an adequate and reasonable system of internal accounting controls. The internal accounting controls shall be written, approved and periodically reviewed by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house of representatives agricultural affairs committee, the legislative services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited biennially by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the director of legislative services and to the senate agricultural affairs committee and the house of representatives agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code. [I.C., § 22-2919, as added by 1988, ch. 51, § 2, p. 75; am. 1993, ch. 327, § 7, p. 1186; am. 1994, ch. 180, § 22, p. 420; am. 1996, ch. 159, § 8, p. 502; am. 2003, ch. 32, § 7, p. 115; am. 2006, ch. 364, § 1, p. 1101.]

STATUTORY NOTES

Cross References. — Bean commission, § 22-2912.

Prior Laws. — Former § 22-2919, which comprised 1957, ch. 94, § 9, p. 158, was repealed by S.L. 1988, ch. 51, § 1.

Amendments. — The 2006 amendment, by ch. 364, in subsection (2), substituted “No moneys shall” for “Funds can” at the beginning; substituted “except upon order of the commission and” for “only”; substituted “such member of the commission as the commission designates” for “two (2) officers designated by the commission” and added the last two sentences.

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 22 of S.L. 1994, ch. 180 became effective January 2, 1995.

22-2920. Uses for moneys. — Funds received under the provisions of this chapter shall be expended for the following purposes:

(a) For the collection of the tax provided for in section 22-2921, Idaho Code, and the enforcement of all the provisions of this chapter.

(b) For the purpose of investigating and procuring better methods of production, transportation, shipment and merchandising of beans, and for the manufacture and merchandising of their by-products.

(c) For the general purpose of advertising beans for food and all other purposes. [1957, ch. 94, § 10, p. 158; am. 1988, ch. 51, § 3, p. 75.]

22-2921. Tax levy. — There is hereby levied and imposed a tax of twelve cents (12¢) per hundredweight on beans covered by this act, which tax shall be due on or before the time when such beans are first handled in the primary channels of trade and shall be paid at such time or times as the commission may by rule or regulation prescribe, but not later than the 15th day of the month next succeeding the three (3) month period in which such beans were handled in the primary channels of trade. The commission shall designate the quarters (three (3) month periods) for the purpose of collection of this tax.

The person first introducing beans into primary channels of trade shall be responsible for payment of the tax. If such person is the dealer or shipper handling beans grown by another he may charge against or recover from the grower of such beans eight cents (8¢) of the cost thereof, but he shall remain liable for and pay four cents (4¢) of the cost thereof. However, if such person is the dealer or handler and is only cleaning the beans for the grower, he shall charge against or recover from the grower the entire tax of twelve cents (12¢) per hundredweight. [1957, ch. 94, § 11, p. 158; am. 1970, ch. 45, § 2, p. 92; 1972, ch. 351, § 2, p. 1038; am. 1978, ch. 135, § 1, p. 309; am. 1992, ch. 91, § 1, p. 281.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

For words "this act", see Compiler's Notes, § 22-2911.

Effective Dates. — Section 3 of S.L. 1970, ch. 45 provided that this act should be in full force and effect on and after July 1, 1970.

22-2922. Dealers' records — Tax returns. — Every dealer or handler shall keep a complete and accurate record of all beans handled by him in the primary channels of trade, such record to be in such form as the commission shall by regulation or rule prescribe. Such records shall be preserved by such dealer or handler for a period of two (2) years and shall be open to inspection at any time upon written or oral request or demand by the commission or its duly authorized agent or employee. Every dealer or handler shall at such times as the commission may by rule or regulation require file with the commission a return under oath on forms to be prescribed and furnished by the commission, stating the quantity of beans handled by such dealer or handler in the primary channels of trade during the period or periods of time prescribed by the commission, and containing such further information as the commission may require. [1957, ch. 94, § 12, p. 158.]

22-2923. Penalty for violations. — Any person who shall violate or aid in the violation of any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof be punished by a fine of not more than \$300 or imprisonment for a period not to exceed 90 days, or both such fine and imprisonment, and all fines collected for violation of this act shall be paid into the Idaho bean marketing and production promotion fund. [1957, ch. 94, § 13, p. 158.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-2911.

Section 14 of S.L. 1957, ch. 94 read: "This act shall be liberally construed, and if any part or portion thereof be declared invalid, or the application thereof to any person, circumstance or thing is declared invalid, the valid-

ity of the remainder of this act and/or the applicability thereof to any person, circumstance or thing shall not be affected thereby, and it is the intention of the legislature to preserve any and all parts of this act if possible."

CHAPTER 30

PRUNES — PROMOTION OF INDUSTRY

SECTION.

22-3001 — 22-3017. [Repealed.]

22-3001 — 22-3017. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — The following sections were repealed by S.L. 2004, ch. 107, § 1, effective July 1, 2004:

22-3001. Declaration of policy. [I.C., § 22-3001, as enacted by 1967, ch. 88, § 1, p. 185.]

22-3002. Commission created. [I.C., § 22-3002, as enacted by 1967, ch. 88, § 1, p. 185; am. 1974, ch. 13, § 8, p. 138; am. 1980, ch. 247, § 13, p. 582.]

22-3003. Definitions. [I.C., § 22-3003, as enacted by 1967, ch. 88, § 1, p. 185.]

22-3004. Members of commission — Nomination and appointment. [I.C., § 22-3004, as enacted by 1967, ch. 88, § 1, p. 185.]

22-3005. Powers and duties of commission. [I.C., § 22-3005, as enacted by 1967, ch. 88, § 1, p. 185; am. 1994, ch. 180, § 23, p. 420.]

22-3006. Research — Investigation. [I.C., § 22-3006, as enacted by 1967, ch. 88, § 1, p. 185.]

22-3007. Idaho prune commission fund. [I.C., § 22-3007, as enacted by 1967, ch. 88, § 1, p. 185.]

22-3008. Bond of administrator. [I.C., § 22-3008, as added by 1967, ch. 88, § 1, p. 185; am. 1971, ch. 136, § 5, p. 522.]

22-3009. State not liable. [I.C., § 22-3009, as enacted by 1967, ch. 88, § 1, p. 185.]

22-3010. Assessments. [I.C., § 22-3010, as enacted by 1967, ch. 88, § 1, p. 185.]

22-3011. Payment of assessments. [I.C., § 22-3011, as enacted by 1967, ch. 88, § 1, p. 185.]

22-3012. Records required. [I.C., § 22-3012, as enacted by 1967, ch. 88, § 1, p. 185.]

22-3013. Increase of assessment. [I.C., § 22-3013, as enacted by 1967, ch. 88, § 1, p. 185.]

22-3014. Returns. [I.C., § 22-3014, as enacted by 1967, ch. 88, § 1, p. 185.]

22-3015. Inspection of premises and records. [I.C., § 22-3015, as enacted by 1967, ch. 88, § 1, p. 185.]

22-3016. Violation — Penalty. [I.C., § 22-3016, as enacted by 1967, ch. 88, § 1, p. 185.]

22-3017. Constitutionality. [I.C., § 22-3017, as enacted by 1967, ch. 88, § 1, p. 185.]

CHAPTER 31

HOPS — PROMOTION OF INDUSTRY

SECTION.

22-3101. Short title.

22-3102. Declaration of policy and purpose of act.

22-3103. Definitions.

22-3104. Idaho hop grower's commission created — Qualifications.

22-3105. Powers and duties of commission.

22-3106. Markings required.

22-3107. Hop assessment levy.

22-3108. Payment of assessment.

SECTION.

22-3109. Assessment return.

22-3110. Penalty for assessment defaults.

22-3111. Enforcement of act.

22-3112. Disposition of receipts — Use of moneys by commission — Transfer of fund.

22-3113. Election of commission members by growers — Procedures for said elections — Vacancy.

22-3114. Dealer's license required — Applica-

SECTION.

tion — Fees — Surety bond —
Revocation of license — For-
feiture of bond.

22-3115. Penalty for violation.

22-3116. Referendum on continuance of com-
mission — Procedures.

SECTION.

22-3117. Winding up of commission's affairs
if vote is in favor of discontinu-
ance.

22-3101. Short title. — This act shall be known as the Hop Industry Act. [1955, ch. 224, § 1, p. 489.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1955, ch. 224, compiled as §§ 22-3101 to 22-3111, 22-3114, and 22-3115.

22-3102. Declaration of policy and purpose of act. — It is hereby declared, as a matter of legislative determination, that economic waste is being fostered in the hop industry of the state of Idaho by the lack of proper advertising and dissemination of information necessary for the development and promotion of the sale of hops grown in the state of Idaho and by the lack of facilities and funds for research on marketing of and markets for hops and for research to improve the quality of hops, to develop and improve control of measures for diseases and pests which attack hops, to improve hop growing culture and to disseminate information to the growers; that hop producing areas in other states are promulgating advertising and promotion campaigns for their products throughout the United States and foreign countries to the extent that hops of this state must be advertised to be able to retain their place on the markets of the United States and foreign countries; and that it is in the interest of the public welfare and general prosperity of the state of Idaho that this avoidable and unnecessary loss of markets to other producing areas be eliminated by the advertising of hops grown in the state of Idaho and that the growers have at their disposal all available information on the best and most advanced methods of growing, harvesting and marketing hops. The purpose of this act is to promote the general welfare of our people by increasing the production of and expanding the market for hops grown in the state of Idaho. [1955, ch. 224, § 2, p. 489.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3101.

22-3103. Definitions. — Wherever used or referred to in this act:

1. The term "commission" means the Idaho hop grower's commission.
2. The term "person" means individual, partnership, corporation, association, growers or any other business unit.
3. The term "hops" means all hops grown, picked, dried and baled in the state of Idaho and all oils or extracts or lupulin derived therefrom but does not include hops, or any oils or extracts or lupulin derived therefrom which are grown in the state of Idaho but which are picked, or dried or baled

outside of the state of Idaho and hops, or any oils, extracts or lupulin derived therefrom, which are grown outside of the state of Idaho but are picked, or dried or baled in the state of Idaho.

4. The term "grower" means the actual producer of hops.

5. The term "bale" means 200 pounds of hops net.

6. The term "handled in the primary channels of trade," means the time when any hops are delivered under a sales contract or delivered for shipment or delivered for processing or consumption.

7. The term "dealer" means and includes any person engaged in the business of buying, receiving, handling or selling hops for profit or remuneration. [1955, ch. 224, § 3, p. 489; am. 1963, ch. 335, § 1, p. 959.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3101.

22-3104. Idaho hop grower's commission created — Qualifications. — There is hereby created and established within the department of agriculture an Idaho hop grower's commission to be known and designated as such which shall be composed of five (5) practical growers, elected as provided in section 22-3113, Idaho Code. Each member of the commission shall be a resident citizen of the state of Idaho for a period of four (4) years prior to his election, shall have had active experience and be now actually engaged in growing hops in Idaho and shall derive a substantial portion of his income from growing hops or be the directing or managing head of a corporation, firm, partnership or other business unit which derives a substantial portion of its income from growing hops. To continue holding office, each member must remain qualified. The governor may remove a member if he becomes disqualified during his term of office or for inability to carry out his duties as commissioner. Upon the establishment of the commission, one (1) member shall serve for a term of one (1) year, two (2) members shall serve for a term of two (2) years, two (2) members shall serve for a term of three (3) years and thereafter all terms of office shall be for a term of three (3) years. The term of office of each member of the commission shall terminate on the third Monday of January of the year in which the term for which the member was elected ends, but each member of the commission shall serve until his respective successor is elected and has qualified. Before entering on the discharge of their duties as members of the commission, each member shall take and subscribe to the oath of office prescribed by law. A majority of the members of the commission shall constitute a quorum for the transaction of all business and the carrying out of all duties of the commission. The commission shall annually elect a chairman from among its members. Members of the commission shall receive no salary except upon the unanimous vote of the commission; however, members, officers and employees of the commission shall be compensated as provided by section 59-509(b), Idaho Code. The commission shall adopt uniform and reasonable regulations governing the incurring and paying of such expenses. [1955, ch. 224, § 4, p. 489; am. 1967, ch. 216, § 1,

p. 650; am. 1974, ch. 18, § 74, p. 364; am. 1980, ch. 247, § 14, p. 582; am. 1983, ch. 34, § 1, p. 84.]

22-3105. Powers and duties of commission. — The powers and duties of the commission shall include the following:

1. To administer and enforce this act.
2. To contract in the name of the commission and be contracted with.
3. To employ and at pleasure discharge a secretary, advertising manager, advertising agents, agents, research director, research staff, attorneys and such clerical and other help as it deems necessary and to control their powers and duties and to fix their compensation.
4. To keep books, records and accounts of all its dealings, which books, records and accounts of all its dealings shall be open to inspection by the state controller at all times.
5. To purchase or authorize the purchase of all office equipment and supplies and incur all other reasonable and necessary expenses and obligations in connection with and required for the proper carrying out of the provisions of this act.
6. To become a member of and purchase membership in trade organizations and to subscribe to and purchase trade bulletins, journals, and other trade publications.
7. To plan and conduct an advertising, publicity and sales promotion campaign to increase the sales of hops and to make such advertising, publicity and sales promotion contracts and other agreements as may be necessary.
8. To plan and conduct a research program on marketing of and markets for hops and a research program to improve the quality of hops, to develop and improve control measures for disease and pests which attack hops and to improve hop growing culture and to disseminate such information among the growers and to make such research contracts and other agreements as may be necessary.
9. To define and designate the character of the brands, labels, stencils or other distinctive marks under which hops may be marketed and to patent, copyright or otherwise protect such identifying distinctive mark, all for the purposes of securing the greatest returns to the grower and of meeting requirements of the advertising campaign of the commission and of protecting the identity of the hops as Idaho hops as near to the final consumer as possible.
10. To prevent any substitution of other hops for Idaho hops and to prevent the misrepresentation or the misbranding of Idaho hops at any and all times and at any and all points.
11. To establish and maintain the executive office of the commission at any place within the state of Idaho which designated place may be changed at the discretion of the commission.
12. To adopt and from time to time alter, rescind, modify or amend all proper and necessary rules, regulations, and orders for the exercise of its powers and the performance of its duties under this act.
13. To cooperate with the director of the department of agriculture in and to pay all or any portion of the costs incurred in the creation, administration

and enforcement of any quarantine and inspection affecting hops and hop plants established pursuant to the laws of the state of Idaho.

14. To plan and conduct a research program for improving old varieties and developing new varieties of hops; to propagate any such improved old varieties or such new varieties of hops; to patent any such improved old varieties or such new varieties of hops and to license the propagation, growing and sale thereof; to adopt such trade names or trademarks in relation to any such improved old varieties or such new varieties of hops and to patent, copyright, or otherwise protect such names; to buy, contract to buy, receive by gift or otherwise acquire, hold, or retain legal title to such improved old varieties or such new varieties of hops including the root stock thereof and the hops produced therefrom; to sell, lease, consign, trade, exchange, or give away or otherwise dispose of any such improved old varieties or such new varieties of hops including the root stock thereof and the hops produced therefrom; to advertise and promote the commercial use of such improved old varieties and new varieties of hops; and to impose, by contract or regulation or otherwise, such conditions and restrictions as may be determined by the commission pertaining to such improved old varieties and such new varieties of hops including the root stock thereof including but not limited to conditions and restrictions limiting, restricting, prohibiting or affecting the use, distribution, acreage, production, geographical areas of planting, cultural practices used in propagation, leasing, assigning, selling, sale price, and the use of trade names and trademarks relating to such improved old varieties or such new varieties of hops including the root stock thereof and the increase thereof and the use of trade names and trademarks to designate hops produced from any such old varieties or such new varieties of hops.

15. To prosecute in the name of the state of Idaho any suit or action for collection of the assessment provided for in this chapter. [1955, ch. 224, § 5, p. 489; am. 1963, ch. 335, § 2, p. 959; am. 1967, ch. 216, § 2, p. 650; am. 1974, ch. 18, § 75, p. 364; am. 1977, ch. 302, § 1, p. 846; am. 1994, ch. 180, § 24, p. 420.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3101.

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho

changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 24 of S.L. 1994, ch. 180 became effective January 2, 1995.

22-3106. Markings required. — In addition to any other brands, labels, stencils, or other marks approved by the commission to be placed upon hops, all hops shall be branded, labeled, stenciled or marked with one (1) identifying distinctive mark defined or designated by the commission which shall identify the hops as having been grown in Idaho. This identifying distinctive mark shall be affixed in such position and manner as the commission may by rule or regulation prescribe to each container of hops or

bale at the time such hops are first handled in the primary channels of trade by the person who first handled such hops in the primary channels of trade. No person shall brand, label, stencil or mark any hops, except hops as defined in this act, with such identifying distinctive mark defined or designated by the commission as herein provided. [1955, ch. 224, § 6, p. 489; am. 1963, ch. 335, § 3, p. 959.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", ch. 335 declared an emergency. Approved see Compiler's Notes, § 22-3101. March 29, 1963.

Effective Dates. — Section 4 of S.L. 1963,

22-3107. Hop assessment levy. — (1) There is hereby levied an initial assessment of twenty (20) cents per bale on each bale of hops handled in the primary channels of trade.

(2) In addition to such initial assessment, there is hereby levied an additional assessment of not exceeding four dollars and eighty cents (\$4.80) per bale on each bale of hops handled in the primary channels of trade. The amount of such additional assessment, if any, shall be determined by resolution of the commission after February first but before July first of each year and shall be submitted to the growers by referendum. The term "production" for the purposes of this subsection means the number of pounds of hops produced by a grower during the calendar year immediately next preceding each annual registration of growers as herein provided. Each grower, whether an individual, a partnership, a corporation, an association or other business unit, shall have one (1) vote at such referendum. No grower shall vote at any such referendum during any year unless such grower has, after January first but prior to January fifteenth of such year, registered with the commission on forms to be supplied by the commission giving such grower's name, mailing address and production, except that for the calendar year in which this subsection takes effect, the period for the registration of growers shall be the fifteen (15) days immediately succeeding the effective date of this subsection. The qualifications of any grower to vote or the amount of such grower's production as shown by such grower's registration may be challenged by any other grower qualified to vote or any member of the commission. All such challenges shall be presented to the commission in writing within ten (10) days after the close of registration and shall be heard and determined by the commission prior to canvassing the returns of any such referendum. After the adoption of a resolution by the commission fixing the amount of the additional assessment to be submitted to a referendum of the growers, the commission shall cause to be mailed by United States registered mail to each grower so registered, at the address appearing on such grower's registration, a ballot setting forth the name of such grower, the grower's production, a copy of the resolution so adopted, and the words, "For additional assessment as provided in the foregoing resolution" followed by a circle and the words "Against the additional assessment as provided in the foregoing resolution" followed by a circle and such ballot shall provide a space at the bottom thereof for the grower's

signature. A grower desiring to vote upon the amount of the additional assessment shall mark the ballot received to express the grower's vote, shall sign the ballot and shall return the ballot to the commission within twenty (20) days after the date on which the ballot was mailed to the grower by the commission. Any ballot which is not returned within such time limit, or which is not voted, or which is not signed, or which is marked both for and against the question submitted, shall be deemed not to have been voted and shall not be counted for any purpose. The commission shall meet and canvass all ballots cast at any such referendum within ten (10) days after the date by which all ballots are herein required to be returned to the commission. Upon the canvass, if the commission finds that two-thirds ($\frac{2}{3}$) or more of the growers voting at such referendum have voted in favor of the amount of such additional assessment and that growers representing two-thirds ($\frac{2}{3}$) or more of the production of all growers voting at such referendum have voted in favor of the amount of such additional assessment, then the amount of such additional assessment shall have been approved, but if the commission finds otherwise, then the amount of such additional assessment shall have failed. The commission shall record the results of each canvass in its official records and shall retain all election records, grower registrations and ballots for one (1) year after the date of such canvass when it may cause the same to be destroyed. If the canvass shows that the amount of such additional assessment shall have been approved, the commission shall immediately adopt a resolution levying the amount thereof. Such additional assessment when so levied shall apply only to the bales of hops grown during the calendar year in which the referendum approving the same was held, but shall so apply regardless of the calendar year in which such bales of hops are first handled in the primary channels of trade. If the canvass shows that the amount of such additional assessment shall have failed, the commission shall not levy the amount thereof, but the commission may re-submit the same or another amount for such additional assessment to the growers by referendum as herein provided as often as the commission deems necessary.

(3) All assessments levied under this act shall be due on or before the time when such hops are first handled in the primary channels of trade and shall be paid at such time or times as the commission may by rule or regulation prescribe, but not later than the last day of the month next succeeding the month in which such hops were first handled in the primary channels of trade.

(4) The assessment constitutes a lien prior to all other liens and encumbrances upon such hops except liens which are declared prior by operation of a statute of this state.

(5) The commission by order may cancel an assessment which has been delinquent for five (5) years or more, if it determines that:

(a) The amount of the assessment is less than one dollar (\$1.00), and that further collection effort or expense does not justify the collection thereof, or

(b) The assessment is wholly uncollectible. [1955, ch. 224, § 7, p. 489; am. 1957, ch. 12, § 1, p. 14; am. 1967, ch. 216, § 3, p. 650; am. 1992, ch. 40, § 1, p. 138.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3101. ch. 12 declared an emergency. Approved February 6, 1957.

Effective Dates. — Section 2 of S.L. 1957,

22-3108. Payment of assessment. — All assessments levied and imposed under and pursuant to the provisions of this chapter shall be paid to the commission by the person, either grower or dealer, by whom the hops are first handled in the primary channels of trade. [1955, ch. 224, § 8, p. 489; am. 1967, ch. 216, § 4, p. 650.]

22-3109. Assessment return. — Every grower and dealer shall at such times as the commission may by rule or regulation prescribed [prescribe], file with the commission a return under oath on forms to be prescribed by and furnished by the commission, stating the number of bales handled in the primary channels of trade during the period or periods of time prescribed by the commission and such other information as the commission may require. [1955, ch. 224, § 9, p. 489; am. 1967, ch. 216, § 5, p. 650.]

STATUTORY NOTES

Compiler's Notes. — The bracketed word "prescribe" was inserted by the compiler.

22-3110. Penalty for assessment defaults. — Any grower or dealer who fails to make collection or to file return or to pay any assessment within the time required pursuant to this act shall thereby forfeit to the commission a penalty of five per cent (5%) of the amount of the assessment determined to be due, as provided in this act, plus one per cent (1%) of such amount for each month of delay or fraction thereof after the expiration of the first month after such return was required to be filed or such assessment became due. The commission, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid to the commission and disposed of as provided with respect to moneys derived from the assessments levied and imposed by this act. [1955, ch. 224, § 10, p. 489; am. 1967, ch. 216, § 6, p. 650.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3101.

22-3111. Enforcement of act. — The commission shall have the power by its duly authorized agent or representative to enter upon the premises of any grower or dealer to examine any books, papers, records or memorandum [memoranda] bearing on the amount of assessments or license fees payable and to secure other information directly or indirectly concerned in the enforcement of this act. No person who is required to pay the assessments or license fees levied and imposed by this act shall by any practice or evasion make it difficult to enforce the provisions of this act by inspection, nor shall

such person after demand by the commission, or any agent or representative designated by it for that purpose, refuse to allow full inspection of the premises or any part thereof or any books, records, documents or other instruments in any way relative to the liability of such person for the assessment or license fee herein imposed nor shall such person hinder or in any manner delay or prevent such inspection. [1955, ch. 224, § 11, p. 489; am. 1967, ch. 216, § 7, p. 650.]

STATUTORY NOTES

Cross References. — Determination of “memoranda” was inserted by the compiler. additional tax, § 22-3107. For words “this act”, see Compiler’s Notes,

Compiler’s Notes. — The bracketed word § 22-3101.

22-3112. Disposition of receipts — Use of moneys by commission — Transfer of fund. — 1. As soon as possible after receipt, all moneys received by the commission from the assessment levied under section 22-3107, Idaho Code, and all other moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such accounts and such banks or trust companies. All funds so deposited in said institutions are hereby appropriated for the purpose of carrying out the provisions of this act.

2.(a) No moneys shall be withdrawn from or paid out of such accounts except upon order of the commission, and upon checks or other orders upon such accounts signed by such member of the commission as the commission designates and countersigned by such other member, officer or employee of the commission as the commission designates. A receipt, voucher or other written record, showing clearly the nature and items covered by each check or other order, shall be kept.

(b) All moneys referred to in subsection 1 of this section shall be used by the commission only for the payment of expenses of the commission in carrying out the powers conferred on the commission.

3. Funds presently held by the state of Idaho in the Idaho hop grower’s commission fund shall be, and hereby are, transferred therefrom to the depository or depositories selected under this act by the commission, and the treasurer of the state of Idaho is hereby directed to transfer such funds.

4. The right is reserved to the state of Idaho to audit all funds of the commission at any time. [I.C., § 22-3112, reen. 1967, ch. 216, § 8, p. 650.]

STATUTORY NOTES

Prior Laws. — Section 8, of S.L. 1967, ch. 216 repealed and reenacted § 22-3112. The prior section was S.L. 1955, ch. 224, § 12.

Compiler’s Notes. — For words “this act”, see Compiler’s Notes, § 22-3101.

22-3113. Election of commission members by growers — Procedures for said elections — Vacancy. — 1. The members of the commission shall be elected by secret mail ballot under the supervision of the

director of the department of agriculture. Members of the commission shall be elected by a majority of the votes cast by the grower members, each grower being entitled to one (1) vote. If a nominee does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two (2) candidates for such position receiving the largest number of votes. The cost of said election shall be paid by the commission although it is supervised by the department of agriculture.

2. Any office which becomes vacant before expiration of the member's term shall be filled by election in the manner provided for regular elections, except that such office may remain vacant until the next regular election if the vacancy is for less than one (1) year. The term of the new director [commissioner] under this subsection shall be only for the unexpired term for which he was elected. [I.C., § 22-3113, reen. 1967, ch. 216, § 9, p. 650; am. 1974, ch. 18, § 76, p. 364.]

STATUTORY NOTES

Prior Laws. — Section 9 of S.L. 1967, ch. 216 repealed and reenacted former § 22-3113, which comprised S.L. 1955, ch. 224, § 13.

Compiler's Notes. — The bracketed word

"commissioner" in subsection 2. was inserted by the compiler.

Effective Dates. — Section 263 of S.L. 1974, ch. 18 provided the act should take effect on and after July 1, 1974.

22-3114. Dealer's license required — Application — Fees — Surety bond — Revocation of license — Forfeiture of bond. — No person shall act as dealer in hops without having obtained a license as provided in this act. Every person acting as a dealer shall file a written application with the commission for a license as such which application shall state the applicant's name, principal business addresses within and without the state of Idaho, the name of the person authorized to receive and accept service of summons and legal notices of all kinds for the applicant within the state of Idaho and such other information as the commission may require. Each application shall be accompanied with a license fee of fifty dollars (\$50.00) and by a good and sufficient surety bond in the penal sum of two thousand dollars (\$2,000) executed by the applicant as principal and by a surety company authorized to do business in the state of Idaho as surety and conditioned upon the applicant's full and complete compliance with the provisions of this act and all of the rules and orders of the commission. The commission shall investigate each applicant thoroughly and if the commission is satisfied that the applicant is of good character and reputation and is financially responsible, a license shall be issued for the period ending on the next succeeding first Monday of January, otherwise the application shall be denied. The commission may revoke a license after thirty (30) days' written notice of its intention so to do, and after providing the licensee with an opportunity for an appropriate contested case in accordance with the provisions of chapter 52, title 67, Idaho Code, if the licensee shall wilfully fail to fully and completely comply with the provisions of this act and all of the rules and orders of the commission. Upon the revocation of such license the full amount of the bond shall be forfeited and damages in that sum shall be conclusively presumed to have been incurred

by the commission. All license fees and all bond forfeitures shall be deposited as provided in section 22-3112, Idaho Code. Any person aggrieved by the final action of the commission is entitled to judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code. [1955, ch. 224, § 14, p. 489; am. 1967, ch. 216, § 10, p. 650; am. 1993, ch. 216, § 4, p. 587.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3101.

22-3115. Penalty for violation. — Every person who shall violate or aid in the violation of any of the provisions of this act or any of the rules, regulations or orders of the commission adopted pursuant to the authority conferred by this act, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not exceeding ninety (90) days or by both such fine and imprisonment and all fines collected for violation of this act shall be deposited as provided in section 22-3112. [1955, ch. 224, § 15, p. 489; am. 1967, ch. 216, § 11, p. 650.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3101.

Section 17 of S.L. 1955, ch. 224 repealed all laws or parts of laws in conflict, in whole or in part, therewith.

Section 16 of S.L. 1955, ch. 224 provided as follows: "That this act shall be liberally construed, and if any part or portion thereof be declared invalid, or the application thereof to any person, circumstances or thing is de-

clared invalid, the validity of the remainder of this act and/or the applicability thereof to any person, circumstance or thing shall not be affected thereby, and it is the intention of the legislature to preserve any and all parts of said act if possible."

Effective Dates. — Section 18 of S.L. 1955, ch. 224 declared an emergency. Approved March 15, 1955.

22-3116. Referendum on continuance of commission — Procedures. — After five (5) years from the date the commission was created, a referendum may be held at the petition of the growers or at the request of the commission. The question shall be submitted by secret mail ballots upon which the words "For continuance of the Idaho Hop Grower's Commission" and "Against continuance of the Idaho Hop Grower's Commission" are printed, with a square before each proposition and a direction to insert an "X" mark in the square before the proposition which the voter favors. In the event a referendum is held as provided in this section, no further referendum on the question of discontinuance of such commission shall be held within five (5) years from the date the results of the previous referendum was declared.

The referendum must be held and supervised by the department of agriculture upon its receiving either of the following:

1. A petition signed by 20% of the growers, or 200 growers, whichever is less. The petitioners shall pay the cost of such referendum if the commission continues but the commission must bear the cost if the majority vote is in favor of discontinuance.

2. A written request from the commission. The commission shall pay the cost of such referendum.

The referendum shall be held, notice thereof given, expenses thereof paid and the result determined, declared and recorded in the office of the secretary of state. No hearing or district meetings of the grower members shall be made prior to the referendum upon the question of determining whether such referendum should be held.

Notice of such referendum must be given by the commission in a manner determined by them. The ballots must also be prepared by the commission and forwarded to the grower members, who shall return them within 20 days after mailing by the commission. [I.C., § 22-3116, as added by 1967, ch. 216, § 12, p. 650.]

22-3117. Winding up of commission's affairs if vote is in favor of discontinuance. — If the vote at the referendum provided in section 22-3114 [22-3116], Idaho Code, is in favor of discontinuation, the commission shall as rapidly as possible terminate its activities, convert its assets to cash and do all other things necessary to terminate its activities. At the termination of such activities, any funds remaining in possession of the commission shall be paid to the University of Idaho for research regarding hops. [I.C., § 22-3117, as added by 1967, ch. 216, § 13, p. 650.]

STATUTORY NOTES

Compiler's Notes. — The bracketed section designation "22-3116" was inserted by the compiler since it is the section that provides for a referendum.

Section 14, S.L. 1967, ch. 216 provides as follows: "If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstance is held

invalid, the constitutionality of the remainder of this act and the applicability thereof to other persons and circumstances shall not be affected thereby."

Effective Dates. — Section 15, S.L. 1967, ch. 216 provides that this act shall take effect on July 1, 1967.

CHAPTER 32

RAINFALL — ARTIFICIAL PRODUCTION

SECTION.

22-3201. Registration of producers of artificial rainfall.

SECTION.

22-3202. Log of activities filed with department of agriculture.

22-3201. Registration of producers of artificial rainfall. — Any person, persons, association, firm, or corporation conducting or intending to conduct within the state of Idaho operations to assist artificially in production of or to produce artificially rainfall shall register with the department of agriculture of the state of Idaho.

Such registration shall require the filing of the name of the person, association, or corporation, its residence, or principal place of business in the state of Idaho and the general nature of the business to be conducted. [1957, ch. 106, § 1, p. 184.]

22-3202. Log of activities filed with department of agriculture. —

Such person, persons, association, firm or corporation shall thereafter file with the said department of agriculture a log of all its activities in the production, artificially, within this state, of rainfall. [1957, ch. 106, § 2, p. 184.]

CHAPTER 33

WHEAT — PROMOTION OF MARKETING

SECTION.

- 22-3301. Declaration of policy.
- 22-3302. Wheat commission created — Members.
- 22-3303. Definitions.
- 22-3304. Qualification of members.
- 22-3305. Term of members.
- 22-3306. Compensation of members.
- 22-3307. Chairman and executive director of commission.
- 22-3308. Meetings of commission.
- 22-3309. Duties and powers of commission.
- 22-3310. Commission accepting grants, donations and gifts.
- 22-3311. Bonds of agents and employees.

SECTION.

- 22-3312. Appointment of executive director — Duties — Salary.
- 22-3313. Establishment of executive director's office.
- 22-3314. State not liable for acts or omissions of commission or of its employees.
- 22-3315. Imposition of tax and provision for late fees.
- 22-3316. Delivery of invoices to growers.
- 22-3317. [Repealed.]
- 22-3318. Penalties.
- 22-3319. Deposit and disbursement of funds.

22-3301. Declaration of policy. — It is to the interest of all the people that the abundant natural resources of Idaho be protected, fully developed and uniformly distributed. Among the agricultural industries of the state of Idaho that contribute to the economic welfare of the state is the wheat industry. Because of a surplus of wheat grown in this state, and because a surplus during recurrent years has become excessive and difficult to market in the available markets, it is necessary, in order to provide a profitable enterprise for the wheat growers of the state and to promote employment of labor and to assist the wheat growers and those in the various industries dependent upon the wheat growers, that additional markets be found and developed. It is the purpose of this act to promote the public health and welfare of the citizens of our state by providing means for the protection, promotion, study, research, analysis and development of markets concerning the growing and marketing of Idaho wheat. [1959, ch. 6, § 1, p. 13.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1959, ch. 6, compiled as §§ 22-3301 to 22-3216 and 22-3318.

22-3302. Wheat commission created — Members. — There is hereby created and established in the department of self-governing agencies the "Idaho Wheat Commission" to be composed of five (5) members appointed by the governor, one (1) from each of the five (5) commission districts referred to in section 22-3304, Idaho Code, who shall be appointed by the governor from a list of names with at least three (3) names for each appointive office for each district submitted to the governor by the Idaho

State Wheat Growers Association, Inc. [Idaho grain producers association], a wheat growers association representing wheat growers throughout the state of Idaho, and they shall hold office for a term of five (5) years. The dean of the College of Agriculture, University of Idaho, or his duly authorized representative, shall be an ex officio members [member] without vote of the commission. [1959, ch. 6, § 2, p. 13; am. 1974, ch. 13, § 11, p. 138.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion in the first sentence was added by the compiler to update the name of the referenced organization.

The bracketed word "member" was inserted by the compiler.

Effective Dates. — Section 194 of S.L. 1974, ch. 13 provided the act should take effect on and after July 1, 1974.

22-3303. Definitions. — As used in this act, unless the context requires otherwise:

(1) "Commercial channels" means the sale of wheat for use as food, feed, seed, or any industrial or chemurgic use, when sold to any commercial buyer, user, dealer, processor, cooperative, or to any person, public or private, who resells any wheat or product produced from wheat.

(2) "Commission" means the Idaho wheat commission.

(3) "First purchaser" means any person, group, association or partnership that buys wheat from the grower in the first instance, or any lienholder, public or private, including the Commodity Credit Corporation, who may possess wheat from the grower under any lien.

(4) "Grower" means any landowner personally engaged in growing wheat, a tenant of the landowner personally engaged in growing wheat, or both the owner and the tenant jointly, and includes a person, partnership, association, corporation, cooperative, trust, sharecropper or any and all other business units, devices and arrangements.

(5) "Sale" includes any pledge, mortgage or delivery of wheat for sale after harvest to any person, public or private.

(6) "Delivery" means placing of wheat into the primary channels of trade.

(7) "Crop reduction program" means an offer by an agency of the United States government to give growers an amount of wheat as payment for reducing planted acreage of wheat. [1959, ch. 6, § 3, p. 13; am. 1983, ch. 227, § 1, p. 628.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3301.

22-3304. Qualification of members. — (1) Members of the commission shall be selected and appointed because of their ability and disposition to serve the state's interest and for knowledge of the state's natural resources. Members shall be citizens over twenty-five (25) years of age, residents of the state who have been actually engaged in growing wheat in this state for at least five (5) years, and who derive a substantial portion of

their income from growing wheat in the state of Idaho. There shall be one (1) member from each of the five (5) districts described hereinafter:

District 1. The six (6) northern counties: Boundary, Bonner, Kootenai, Benewah, Latah and Shoshone.

District 2. Nez Perce, Lewis, Idaho, Adams, Washington, Payette, Gem, Boise, Valley and Clearwater Counties.

District 3. Canyon, Owyhee, Ada, Elmore, Camas, Gooding, Twin Falls, Blaine, Lincoln, Jerome, Minidoka and Cassia Counties.

District 4. Lemhi, Custer, Butte, Clark, Fremont, Jefferson, Madison, Teton, Bingham and Bonneville Counties.

District 5. Power, Bannock, Caribou, Oneida, Franklin and Bear Lake Counties. [1959, ch. 6, § 4, p. 13.]

22-3305. Term of members. — Each year the governor shall appoint one (1) member to the commission for a term of five (5) years ending on June 30th, except the first members who shall be appointed for terms of one (1) to five (5) years each, as follows: District No. 1, three (3) years; District No. 2, four (4) years; District No. 3, two (2) years; District No. 4, one (1) year; District No. 5, five (5) years; except that a member appointed to fill a vacancy occurring before the expiration of the term of a member separated from the commission for any cause, shall be appointed for the remainder of the term of the member whose position has been vacant. Each member shall hold office until his successor is appointed and qualified. [1959, ch. 6, § 5, p. 13.]

22-3306. Compensation of members. — Members of the commission shall be compensated as provided by section 59-509(h), Idaho Code. [1959, ch. 6, § 6, p. 13; am. 1980, ch. 247, § 15, p. 582; am. 1990, ch. 157, § 1, p. 343.]

22-3307. Chairman and executive director of commission. — The commission shall elect a chairman and shall employ an executive director who is not a member of the commission. [1959, ch. 6, § 7, p. 13; am. 2000, ch. 99, § 1, p. 219.]

22-3308. Meetings of commission. — The commission shall meet at least once every three (3) months regularly and at such other times as called by the chairman. The chairman may call special meetings of the commission at any time or place. [1959, ch. 6, § 8, p. 13.]

22-3309. Duties and powers of commission. — (1) Consistent with the general purposes of this chapter, the commission shall establish the policies to be followed in the accomplishments of such purposes.

(2) In the administration of this act, the commission shall, in conjunction with the Idaho State Wheat Growers' Association [Idaho grain producers association], have the following duties, authorities and powers:

- (a) To conduct a campaign of research, education and publicity.
- (b) To find new markets for wheat and wheat products.

(c) To give, publicize and promulgate reliable information showing the value of wheat and wheat products for any purpose for which it is found useful and profitable.

(d) To make public and encourage the widespread national and international use of the special kinds of wheat and wheat products produced from all varieties of wheat grown in Idaho.

(e) To investigate and participate in studies of the problems peculiar to the producers of wheat in Idaho.

(3) The commission shall have the duty, power and authority:

(a) To take such action as the commission deems necessary or advisable in order to stabilize and protect the wheat industry of the state and the health and welfare of the public.

(b) To sue and be sued.

(c) To enter into such contracts as may be necessary or advisable.

(d) To appoint and employ officers, agents and other personnel, including experts in agriculture and the publicizing of the products thereof, and to prescribe their duties and fix their compensation.

(e) To make use of such advertising means and methods as the commission deems advisable and to enter into contracts and agreements for research and advertising within and without the state.

(f) To cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state or by national law, engaged in work or activities similar to the work and activities of the commission, and to enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of research, education and publicity and reciprocal enforcement.

(g) To lease, purchase or own the real or personal property deemed necessary in the administration of this act.

(h) To prosecute in the name of the state of Idaho any suit or action for collection of the tax or assessment provided for in this act.

(i) To adopt, rescind, modify and amend all necessary and proper orders, resolutions and regulations for the procedure and exercise of its powers and the performance of its duties.

(j) To incur indebtedness and carry on all business activities.

(k) To keep books and records and accounts of all its doings, which books, records and accounts shall be open to inspection by the state controller and public at all times. [1959, ch. 6, § 9, p. 13.; am. 1994, ch. 180, § 25, p. 420.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion in the introductory paragraph in subsection (2) was added by the compiler to update the name of the referenced organization.

For words "this act", see Compiler's Notes, § 22-3301.

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday

in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 25 of S.L. 1994, ch. 180 became effective January 2, 1995.

22-3310. Commission accepting grants, donations and gifts. —

The commission may accept grants, donations and gifts of funds from any source for expenditure for any purpose consistent with this chapter which may be specified as a condition of any grant, donation or gift. All funds received under the provisions of this chapter shall be paid into a bank account in the name of the Idaho wheat commission and such moneys are hereby continuously appropriated and made available for defraying the expenses of the commission in carrying out the provisions of this chapter. [1959, ch. 6, § 10, p. 13; am. 1988, ch. 191, § 1, p. 346.]

22-3311. Bonds of agents and employees. — The executive director, or any agent or employee appointed by the commission shall be bonded to the state of Idaho in the time, form and manner as prescribed by chapter 8, title 59, Idaho Code. The cost of the bond is an administrative expense under this chapter. [1959, ch. 6, § 11, p. 13; am. 1971, ch. 136, § 8, p. 522; am. 2000, ch. 99, § 2, p. 219.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3301.

22-3312. Appointment of executive director — Duties — Salary. —

The commission shall appoint an executive director who shall devote full time to the administration of this chapter. He shall proceed immediately to prepare the plans and general program necessary and adequate to carry out the policies that are adopted by the commission. The executive director shall be paid a reasonable salary fixed by the commission, commensurate with his duties, and all necessary expenses. [1959, ch. 6, § 12, p. 13; am. 2000, ch. 99, § 3, p. 219.]

STATUTORY NOTES

Effective Dates. — Section 5 of S.L. 2000, ch. 99 provided that the act shall be in full force and effect on and after July 1, 2000.

22-3313. Establishment of executive director's office. — For the convenience of the majority of those most likely to be affected in the administration of this chapter, the executive director, upon recommendation of the commission, shall establish and maintain an office for the executive director within the state of Idaho. [1959, ch. 6, § 13, p. 13; am. 2000, ch. 99, § 4, p. 219.]

22-3314. State not liable for acts or omissions of commission or of its employees. — The state of Idaho is not liable for the acts or omissions of the commission or any member thereof or any officer, agent or employee thereof. [1959, ch. 6, § 14, p. 13.]

22-3315. Imposition of tax and provision for late fees. — (1) From and after the first day of July, 1992, there is hereby levied and imposed a tax

not to exceed two cents (2¢) per bushel on all wheat grown in the state of Idaho or given to Idaho growers under a crop reduction program, and sold or contracted through commercial channels, and each and every crop grown or wheat given to growers under a crop reduction program thereafter. The tax shall be due on wheat given to growers under a crop reduction program and sold or contracted through commercial channels, regardless of any deduction of the tax on this same wheat prior to it being given to the grower. The tax shall be due on or before the time when such wheat is first sold or contracted in the commercial channels and shall be paid at such time or times as the commission may, by rule, prescribe, as hereinafter provided, but not later than the 15th day of the month next succeeding the three (3) month period in which such wheat is sold or contracted in commercial channels. The commission shall designate the quarters (three (3) month periods) for the purpose of collection of this tax.

(2) The tax shall be levied and assessed to the grower at the time of delivery for sale and shall be deducted by the first purchaser from the price paid to the grower at the time of sale or in case of a lienholder who may possess such wheat under his lien, the tax shall be deducted by the lienholder from the proceeds of the claim secured by such lien at the time the wheat is pledged or mortgaged. The tax shall be deducted as provided in this section whether the wheat is stored in this or any other state. The commission may, however, permit any federal corporation, such as the commodity credit corporation, to waive its responsibility for the collection of the tax, provided the amount of the tax is one dollar (\$1.00) or less.

(3) It shall be within the discretion of the commission to establish the amount of the tax to be levied. The amount of the tax to be levied shall not exceed two cents (2¢) per bushel for any fiscal year. The decision whether to adjust the amount of the tax to be levied and the time for which the adjusted levy shall be in effect shall require the vote of a majority of the commission members.

(4) The tax constitutes a lien prior to all other liens and encumbrances upon such wheat except liens which are declared prior by operation of a statute of this state.

(5) Any person or firm who makes payment to the commission at a date later than that prescribed in this section may be subject to a late payment penalty as set forth by the commission by rule. Such penalty shall not exceed the rate of fifteen percent (15%) per annum on the amount due. In addition to the above penalty, the commission shall be entitled to recover all costs, fees, and reasonable attorney's fees incurred in the collection of the tax and penalty provided for in this section. [1959, ch. 6, § 15, p. 13; am. 1970, ch. 36, § 1, p. 80; am. 1974, ch. 36, § 1, p. 1016; am. 1983, ch. 227, § 2, p. 628; am. 1990, ch. 199, § 1, p. 448; am. 1992, ch. 63, § 1, p. 195; am. 2001, ch. 105, § 1, p. 348.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates. — Section 2 of S.L. 1970, ch. 36 provided that this act should be in full force and effect on and after July 1, 1970.

Section 2 of S.L. 1974, ch. 36 provided the act should take effect on and after July 1, 1974.

22-3316. Delivery of invoices to growers. — (1) The purchaser, at the time of settlement, shall make and deliver separate invoices for each purchase to the grower.

(2) The invoices shall be on forms and in such numbers as prescribed and supplied by the commission and shall show at least:

- (a) The name or names and address or addresses of the grower and seller.
- (b) The name and address of the purchaser.
- (c) The number of bushels of wheat sold.
- (d) The date of the purchase.

(3) The invoices shall be legibly written and shall have no corrections or erasures on the face thereof.

(4) Unlawful or willful alteration of an invoice shall constitute a misdemeanor. [1959, ch. 6, § 16, p. 13.]

STATUTORY NOTES

Cross References. — Penalties for violations of chapter, § 22-3318.

22-3317. Payment of tax — Disposition of receipts — Continuing appropriation. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1959, ch. 6, § 17, p. 13, was repealed by S.L. 1988, ch. 191, § 2.

22-3318. Penalties. — Any person who shall violate or aid in the violation of any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof be punished by a fine of not more than \$300 or imprisonment not to exceed 90 days, or both. Fines collected for violation of this act shall be paid into the "Idaho Wheat Commission Fund." [1959, ch. 6, § 18, p. 13.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3301.

Section 19 of S.L. 1959, ch. 6 provided as follows: "This act shall be liberally construed, and if any part or portion thereof be declared invalid, or the application thereof to any person, circumstance or thing is declared invalid, the validity of the remainder of this act and/or

the applicability thereof to any persons, circumstance or thing shall not be affected thereby, and it is the intention of the legislature to preserve any and all parts of this act if possible."

Effective Dates. — Section 20 of S.L. 1959, ch. 6 declared an emergency. Approved February 9, 1959.

22-3319. Deposit and disbursement of funds. — (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more

banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the director of legislative services and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code. [I.C., § 22-3319, as added by 1988, ch. 191, § 3, p. 346; am. 1993, ch. 327, § 8, p. 1186; am. 1994, ch. 180, § 26, p. 420; am. 1996, ch. 159, § 9, p. 502; am. 2003, ch. 32, § 8, p. 115.]

STATUTORY NOTES

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to

state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 26 of S.L. 1994, ch. 180 became effective January 2, 1995.

CHAPTER 34

PESTICIDES AND CHEMIGATION

SECTION.

22-3401. Definitions.

22-3402. Registration — Labels — Information required — Fees.

22-3403. Experimental permits.

22-3404. Pesticide and chemigation applicators — Classification licensing requirements.

SECTION.

22-3405. [Repealed.]

22-3406. Pesticide dealers.

22-3406A. Responsibilities of chemical suppliers.

22-3406B. Chemigator responsibilities.

22-3407. Requalification.

22-3407A. Use of irrigation system for

SECTION.

- chemigation — Compliance with standards and requirements.
- 22-3407B. Department to compile list.
- 22-3408. Stop sale, use or removal order and chemigation stop work order.
- 22-3409. Denial, suspension, or revocation of a license or permit.
- 22-3410. Reciprocity.
- 22-3411. Change of address or place of business.
- 22-3412. Delegation of duties.
- 22-3413. Container disposal.
- 22-3414. Inspection.
- 22-3415. Fees collected — Disposition.

SECTION.

- 22-3416. Cooperation with other agencies.
- 22-3417. Damage claims.
- 22-3417A. Liability limited.
- 22-3418. Restricted pesticide use.
- 22-3419. Procedure for establishing a restricted area.
- 22-3420. Prohibited acts.
- 22-3421. Adoption and scope of rules.
- 22-3422. Penalties for operating without license.
- 22-3423. Penalty for violations.
- 22-3424. Review of action of director.
- 22-3425. Severability.
- 22-3426. Uniformity of state pesticide rule.

22-3401. Definitions. — When used in this act:

(1) "Adulterated" means a pesticide is adulterated for the purpose of this act if the strength or purity of the pesticide is below the purported or professed standard of quality as expressed in its labeling, or any substance has been substituted wholly or in part for any ingredient of the pesticide, or any valuable constituent thereof has been omitted wholly or in part.

(2) "Antipollution device" means any mechanical equipment used to reduce hazard to the environment in cases of malfunction or shutdown of chemigation equipment during chemigation and may include, but not be limited to, interlock, irrigation line check valve, chemical line closure device, vacuum relief device and automatic low-pressure drain.

(3) "Certified applicator" means a person who has qualified as a professional applicator, or private applicator under the provisions of this act and the rules promulgated by the director.

(4) "Chemical" means any fertilizer or pesticide.

(5) "Chemigation" means any process whereby chemicals are added to irrigation water applied to land, crops or plants through an irrigation system, such as, but not limited to, agricultural, nursery, turf, lawn, golf course and greenhouse sites.

(6) "Defoliant" means any substance or mixture of substances intended for causing the foliage to drop from a plant, with or without causing abscission.

(7) "Department" means the Idaho department of agriculture.

(8) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.

(9) "Designated agent" means an employee or agent of the state authorized by the director to perform various duties in connection with enforcement of this act.

(10) "Device" means an instrument or contrivance, other than a firearm, intended to trap, destroy, control, repel or mitigate any pest or any other form of plant or animal life, other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals, but does not include equipment used for the application of pesticides when sold separately therefrom.

(11) "Director" means the director of the department of agriculture of the state of Idaho.

(12) "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or receive and, having so received, deliver or offer to deliver, pesticides in this state.

(13) "Environment" includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these.

(14) "EPA" means the United States Environmental Protection Agency.

(15) "Fertilizer" means any formulation or product used as a plant nutrient which is intended to promote plant growth and contains one (1) or more plant nutrients.

(16) "General use pesticide" means any pesticide which is not a restricted-use pesticide.

(17) "Irrigation system" means any device or combination of devices having a hose, pipe, or other conduit which connects directly to any source of ground or surface water, through which water or a mixture of water and chemicals is drawn and applied to land, crops or plants. The term does not include any hand-held sprayer or other similar device which is constructed so that an interruption in water flow automatically prevents any backflow into the water source.

(18) "Label or labeling" means the written, printed or graphic matter on or attached to the pesticide or device or any of its containers or wrappers. It would also include all other written, printed or graphic material that accompanies the pesticide or device at any time.

(19) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(20) "Misbranded" shall apply to (a) any pesticide or device if its labeling bears any false or misleading statement, design or graphic representation, and (b) any pesticide if such pesticide is not labeled as required by section 22-3402, Idaho Code, and (c) any pesticide if the labeling bears any reference to the registration provisions of section 22-3402, Idaho Code, unless such reference is required by rules promulgated by the director.

(21) "Person" means any individual, partnership, association, fiduciary corporation, or any organized group of persons whether incorporated or not.

(22) "Pest" means (a) any insect, rodent, nematode, fungus, weed, or (b) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism, except virus, bacteria, or other microorganism on or in living man or other living animals, which the director declares to be a pest.

(23) "Pesticide" means but is not limited to (a) any substance or mixture of substances intended to prevent, destroy, control, repel or mitigate any insect, rodent, nematode, snail, slug, fungus, weed and any other form of plant or animal life or virus, except virus or fungus on or in living man or other animal, which is normally considered to be a pest or which the director may declare to be a pest, and (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant, and (c) any spray adjuvant.

(24) "Pesticide dealer" means a person who distributes any restricted-use pesticide or general use pesticide except those exempted in section 22-3406, Idaho Code, or any pesticide whose uses or distribution are further restricted by the director by rule.

(25) "Pesticide equipment" means any equipment, machinery, or apparatus used in the actual application of pesticides including aircraft and ground-spraying equipment.

(26) "Pesticide industry representative" means a person who is a pesticide manufacturer's representative, distributor's representative, or any field representative of any company or organization that deals in agricultural commodities, who uses or supervises the application of restricted-use pesticides solely for the purpose of demonstrating the use of the restricted-use pesticide.

(27) "Plant regulator" means any substance or mixture of substances intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments.

(28) "Private applicator" means a person who: (a) uses or supervises the use of restricted-use pesticides to produce agricultural commodities or forest crops on land owned or rented by him or his employer; or (b) applies restricted-use pesticides on the property of another without compensation other than the trading of personal services between producers of agricultural commodities; or (c) applies chemicals through irrigation systems on land owned or rented by him or his employer.

(29) "Professional applicator" means a person who: (a) applies pesticides upon the land or property of another for compensation, or applies chemicals through irrigation systems upon the land or property of another for compensation; or (b) uses or supervises the use of restricted-use pesticides and is not a private applicator; or (c) offers or supplies technical advice or recommendations regarding the use of agricultural pesticides.

(30) "Restricted area" means an area established under the provisions of section 22-3419, Idaho Code, to prohibit or restrict the application of pesticides in order to prevent injury to land, people, animals, crops or the environment.

(31) "Restricted-use pesticide" means any pesticide or pesticide use classified for restricted use by the administrator of EPA.

(32) "Spray adjuvant" means any wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or to the effect thereof, and which is in a separate container from that of the pesticide with which it is to be used.

(33) "State restricted pesticide use" means any pesticide use which, when used as directed in accordance with a widespread and commonly recognized practice, may be further restricted when the director determines, subsequent to a hearing, that additional restrictions are needed for that use to

prevent unreasonable adverse effects on the environment including man, lands, beneficial insects, animals, crops and wildlife, other than pests.

(34) "Under the direct supervision of a certified private applicator" means that, unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified private applicator if it is applied by a competent person acting under the instructions and control of a certified private applicator who is available if and when needed, even though the certified private applicator is not physically present at the time and place the pesticide is applied.

(35) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

(36) "Wildlife" means all living things that are neither human, domesticated, nor as defined in this act, pests, including but not limited to, mammals, birds and aquatic life. [I.C., § 22-3401, as added by 1976, ch. 190, § 2, p. 688; am. 1990, ch. 269, § 1, p. 759; am. 1996, ch. 22, § 1, p. 41; am. 1999, ch. 69, § 3, p. 180.]

STATUTORY NOTES

Prior Laws. — Former §§ 22-3401 — 22-3416, comprising S.L. 1963, ch. 52, §§ 1-11, p. 204; am. 1967, ch. 52, § 4, p. 204; am. 1967, ch. 29, § 1, p. 51; am. 1971, ch. 318, §§ 1-14, p. 1265; am. 1972, ch. 190, § 1, p. 477; am. 1974, ch. 18, §§ 77-90, p. 364, were repealed by S.L. 1976, ch. 190, § 1.

Compiler's Notes. — The words "this act" refer to S.L. 1976, ch. 190, which is compiled as §§ 22-3401 to 22-3404, 22-3406, 22-3407, 22-3408 to 22-3417, and 22-3418 to 22-3424.

22-3402. Registration — Labels — Information required — Fees.

— (1) Any pesticide which is distributed within this state shall be registered with the department, and such registration shall be renewed annually.

(2) The registrant shall file with the department a statement including:

(a) The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant; and

(b) the name of the pesticide; and

(c) a complete copy of the labeling except for annual renewals where the registrant has certified that the product label on file with the department is unchanged; and

(d) if requested by the director the registrant shall furnish efficacy data upon which all the label claims are based for those products registered for special local needs as provided for in Section 24(c) of the Federal Insecticide, Fungicide, Rodenticide Act; and

(e) such other information as the director may require.

(3) Contents of the label:

(a) All pesticide labels shall contain statements, words, graphic material and any other information required by federal laws; and

(b) all labels for spray adjuvants shall contain but are not limited to:

1. The name of the pesticide; and

2. the name and address of the manufacturer. An unqualified name and address listed on the label shall be considered the manufacturer's name and address; and
3. the registrant's name and address. If the registrant's name appears on the label and the registrant is not the manufacturer, it must be qualified by appropriate wording such as "packaged for or distributed by"; and
4. the net contents; and
5. the name and type of functioning agents. If more than three (3) agents are present, only the three (3) principal agents need be named; and
6. the total percentage of constituents ineffective as a spray adjuvant; and
7. directions for use.

(4) Pesticides which have identical ingredient statements, identical label claims, are manufactured by the same company, and the labels of which bear a designation identifying the products as the same pesticide may be registered as a single pesticide provided the additional product names and labels are supplied and specified as one (1) pesticide.

(5) The director may register a pesticide if he determines that, when considered in connection with any restrictions imposed under section 22-3419, Idaho Code:

- (a) Its composition is such as to warrant the proposed claims for it; and
- (b) its labeling and other material required to be submitted comply with requirements of federal law and Idaho law; and
- (c) it will not cause an unreasonable adverse effect on the environment; and
- (d) in the case of an application for registration for a special local need:
 1. A special local need exists, and
 2. authority to issue the registration in question has been obtained from the administrator of EPA, pursuant to Section 24(c), Federal Insecticide, Fungicide, Rodenticide Act.

(6) The registrant shall pay an annual registration fee as prescribed by rule.

(7) If the application for renewal is not filed with the department prior to January 1 of each year a late penalty fee of five dollars (\$5.00) per product shall be assessed and added to the original fee and shall be paid prior to the issuing of the renewal registration. No penalty fee shall be assessed if the applicant furnishes an affidavit stating that he did not distribute such unregistered pesticide subsequent to the expiration of registration of that pesticide.

(8) The director, whenever he deems it necessary in the administration of this act, may require the submission of the complete formula of any pesticide.

(9) A registration shall expire on December 31 following issuance unless the registration has been suspended or revoked as provided for in paragraph (10) of this section.

(10) Refusal to register, suspension:

(a) If it does not appear to the director that the composition of the pesticide is such as to warrant the proposed claims for it, or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of this act or rules adopted thereunder, he shall notify the applicant of the manner in which the pesticide, labeling or other material required to be submitted fails to comply with the provisions of this act so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of such notice, the applicant does not make the required changes, the director may refuse to register the pesticide. The applicant may request a hearing as provided for in the provisions of chapter 52, title 67, Idaho Code.

(b) When the director determines that a pesticide or its labeling does not comply with the provisions of this act or the rules adopted thereunder, or when necessary to prevent unreasonable adverse effects on the environment, he may suspend, revoke, or modify the registration of such pesticide in accordance with the provisions of chapter 52, title 67, Idaho Code.

(11) Exemptions:

(a) The following pesticides are exempt from subsection (1) of this section:

1. A pesticide that is shipped intrastate from one plant to another operated by the same person solely for the purpose of repackaging or for use as a constituent part of another pesticide produced at the second plant; and

2. a pesticide labeled for experimental use only under the provisions of Section 5 of the Federal Insecticide, Fungicide, Rodenticide Act or section 22-3403, Idaho Code; and

3. a pesticide that is transported through the state to a destination outside of the state; and

4. a pesticide that is manufactured within the state solely for the purpose of exportation.

(b) Federal, state of Idaho, and other governmental agencies are exempt from subsections (6) and (7) of this section. [I.C., § 22-3402, as added by 1976, ch. 190, § 2, p. 688; am. 1993, ch. 54, § 1, p. 142; am. 1996, ch. 22, § 2, p. 41.]

STATUTORY NOTES

Prior Laws. — Former § 22-3402 was repealed. See Prior Laws, § 22-3401.

Federal References. — Sections 5 and 24(C) of the Federal Insecticide, Fungicide,

Rodenticide Act referred to in this section, are compiled as 7 U.S.C. §§ 136c and 136v(c).

Compiler's Notes. — For the words "this act", see Compiler's Notes, § 22-3401.

22-3403. Experimental permits. — Provided that the state is authorized by the Administrator of EPA to issue experimental permits and subject to the terms and conditions of such authorization, the director may:

(1) Issue an experimental permit to any person applying for an experimental permit if he determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide for a special local need under section 22-3402(5), Idaho Code, and that the

pesticide use under the proposed terms and conditions would not cause unreasonable adverse effects on the environment.

(2) Prescribe terms, conditions, and period of time for the experimental permit.

(3) Revoke or modify any experimental permit, at any time, if he finds that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment. [I.C., § 22-3403, as added by 1976, ch. 190, § 2, p. 688; am. 1996, ch. 22, § 3, p. 41.]

STATUTORY NOTES

Prior Laws. — Former § 22-3403 was repealed. See Prior Laws, § 22-3401.

22-3404. Pesticide and chemigation applicators — Classification licensing requirements. — (1) The director may classify pesticide applicator licenses issued under this act. Such classifications may include, but are not limited to, professional and private applicators. Separate licensing requirements and testing procedures may be utilized for each classification.

(2) Professional Applicators — no person shall act as a professional applicator without first obtaining a professional applicator's license issued by the department.

(a) Application for a license shall be on a form prescribed by the department and shall be accompanied by a fee as prescribed by rule; and

(b) on the application for a license to perform chemigation, the applicant must certify that the equipment and system he plans to use for chemigation meet department standards and that the owner and persons operating the equipment have read the Idaho rules for chemigation and that the owner intends to operate and maintain the chemigation system according to the rules. On the application for licensure, the department may require other information as it deems necessary; and

(c) an applicant must be at least eighteen (18) years of age and must pass the department's examination in order to demonstrate his knowledge of how to apply, use and handle pesticides or chemicals in areas relevant to the operations he intends to undertake, or proper equipment and methods for injecting chemicals through irrigation systems; and

(d) show proof of financial responsibility as prescribed by rule; and

(e) an examination fee will be charged as prescribed by rule and an additional examination fee of five dollars (\$5.00) shall be charged when an exam is requested at other than a regularly scheduled examination date; and

(f) if at any time a licensed professional applicator fails to maintain the financial responsibility required by paragraph (d) of this subsection, his license shall be automatically suspended until the department receives verification that he is in compliance with paragraph (d) of this subsection.

(3) Private Applicator — no person shall act as a private applicator without first obtaining a private applicator license issued by the department.

(a) Application for a license shall be on a form prescribed by the department; and

(b) on the application for a license to perform chemigation, the applicant must certify that the equipment and system he plans to use for chemigation meet department standards and that the owner and persons operating the equipment have read the Idaho rules for chemigation and that the owner intends to operate and maintain the chemigation system according to the rules. On the application for licensure, the department may require other information as it deems necessary; and

(c) an applicant must be at least eighteen (18) years of age and must pass the department's examination in order to demonstrate his knowledge of how to apply, use and handle pesticides or chemicals in areas relevant to the operations he intends to undertake or proper equipment and methods for injecting chemicals through irrigation systems; and

(d) an applicant must pay a license fee as prescribed by rule.

(4) If the director finds an applicant qualified for a professional or private applicator's license;[,] and if an applicant applying for a license to engage in the application of pesticides or chemicals has met all of the requirements of any applicable federal or state laws, regulations and rules, the director shall issue the license. The license or permit may restrict the applicant to the use of a certain type or types of equipment, pesticides or chemicals. If a license or permit is not issued as applied for, the department shall inform the applicant in writing of the reasons therefor.

(5) The director may by rule require professional applicators to maintain and furnish records forthwith pertaining to the application of pesticides and other relevant information as he may deem necessary.

(6) Licenses issued to dealers, professional and private applicators shall expire as designated by the director unless suspended or revoked as provided for in section 22-3409, Idaho Code.

(7) Exemptions:

(a) The following persons are exempt from subsections (2), (3) and (4) of this section unless the person is applying chemicals through an irrigation system:

1. Any person applying pesticides other than restricted-use pesticides for himself or on an exchange of service basis, and who does not publicly hold himself out as a professional applicator; and

2. any person using hand-powered equipment to apply pesticides other than restricted-use pesticides to lawns, or to ornamental trees and shrubs owned by such person, or as an incidental part of his business of taking care of yards for remuneration, and is not holding himself out as a professional applicator; and

3. any industry, governmental, University of Idaho research personnel and extension research personnel who apply pesticides other than restricted-use pesticides to experimental plots or to demonstrate the use of pesticides; and

4. any veterinarian who applies pesticides as an integral part of his business and does not publicly hold himself out as a professional applicator.

(b) Federal, state, and other governmental agencies are exempt from the licensing fees provision of subsections (2) and (3) of this section.

(c) Professional applicators who do not apply pesticides may receive an exemption from the proof of financial responsibility required in subsection (2)(d) of this section, upon submitting a completed form prescribed by the department. [I.C., § 22-3404, as added by 1976, ch. 190, § 2, p. 688; am. 1984, ch. 148, § 1, p. 347; am. 1987, ch. 104, § 1, p. 214; am. 1987, ch. 299, § 1, p. 635; am. 1993, ch. 54, § 2, p. 142; am. 1996, ch. 22, § 4, p. 41; am. 1997, ch. 15, § 1, p. 19; am. 1999, ch. 69, § 4, p. 180; am. 2000, ch. 159, § 1, p. 401.]

STATUTORY NOTES

Prior Laws. — Former § 22-3404 was repealed. See Prior Laws, § 22-3401.

Compiler's Notes. — For the words "this act", see Compiler's Notes, § 22-3401.

The bracketed insertion in subsection (4) was added by the compiler.

Effective Dates. — Section 2 of S.L. 1997, ch. 15 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval retroactive to July 1, 1996. Approved February 19, 1997.

22-3405. Pest control consultants — Licensing requirements. [Repealed.]

STATUTORY NOTES

Prior Laws. — Another former § 22-3405 was repealed. See Prior Laws, § 22-3401.

Compiler's Notes. — This section, which comprised I.C., § 22-3405, as added by 1976,

ch. 190, § 2, p. 688; am. 1984, ch. 148, § 2, p. 347; am. 1993, ch. 54, § 3, p. 142, was repealed by S.L. 1996, ch. 22, § 5, effective July 1, 1996.

22-3406. Pesticide dealers. — No person shall act as a pesticide dealer without first obtaining a pesticide dealer's license issued by the department.

(1) Licensing:

(a) Application for a pesticide dealer's license shall be on a form prescribed by the department and shall be accompanied by a fee as prescribed by rule; and

(b) an applicant who sells restricted-use pesticides must pass the department's examination and obtain a professional applicator's license in order to demonstrate his knowledge of how to use and handle pesticides in areas relevant to the operation he intends to undertake; and

(c) such application shall be due as prescribed by rule; and

(d) a license shall be required for each location, outlet, or warehouse from which such pesticides are distributed; and

(e) for an applicant selling restricted-use pesticides an examination fee will be charged as prescribed by rule and an additional examination fee of five dollars (\$5.00) shall be charged when an exam is requested at other than a regularly scheduled examination date.

(2) Records and Reports:

(a) Restricted-use pesticides or devices: The director shall require a pesticide dealer to keep accurate sale and distribution records of restricted-use pesticides or devices as prescribed by rule;

- (i) The director may also require a pesticide dealer to maintain other records and furnish reports for restricted-use pesticides or devices he determines necessary to implement the provisions of this act; and
 - (ii) Records shall be maintained for three (3) years and be available for inspection and reproduction by the director at all reasonable times; and
 - (iii) The dealer shall be required to post total sales of each restricted-use pesticide by county and shall not include detailed customer sales records or customer invoice records. This report shall be furnished to the director no more than two (2) times per year as prescribed by rule.
- (b) General use pesticides: The director shall require a pesticide dealer to keep accurate sale and distribution records as prescribed by rule of general use pesticides except those exempted in subsection (4) of this section.

- (i) Records shall be maintained for three (3) years and be available for inspection and reproduction by the director at all reasonable times; and
- (ii) The dealer shall be required to report total sales of each general use pesticide by county and shall not include detailed customer sales records or customer invoice records. This report shall be furnished to the director no more than two (2) times per year as prescribed by rule; and
- (iii) The director may require dealers to furnish other reports of these records in the case of emergency as provided by rule.

(3) Pesticide dealers shall sell restricted-use pesticides (RUP) only to licensed professional and private applicators, and dealers; however, pesticide dealers may sell an RUP to an unlicensed person provided the application of the RUP is made by a licensed professional applicator or licensed private applicator.

(4) Exemptions:

- (a) A manufacturer's representative or wholesale distributor shall be exempt from subsection (1) of this section provided such representative or distributor does not have a warehouse in Idaho that pesticides are sold, stored or distributed from; and
- (b) federal, state and other governmental agencies are exempt from the examination and licensing fees of this section; and
- (c) the director may exempt a pesticide from the provisions of subsection (1) or (2) of this section by rule if it is determined that licensing or recordkeeping is not necessary for selling the pesticide.

(5) A user of a pesticide, without obtaining a pesticide dealer's license, may for the exclusive purpose of keeping it from becoming a waste, distribute a properly labeled pesticide to another user who is legally entitled to use that pesticide. [I.C., § 22-3406, as added by 1976, ch. 190, § 2, p. 688; am. 1984, ch. 148, § 3, p. 347; am. 1990, ch. 269, § 2, p. 759; am. 1992, ch. 43, § 1, p. 143; am. 1993, ch. 54, § 4, p. 142; am. 1996, ch. 22, § 6, p. 41; am. 1999, ch. 69, § 5, p. 180; am. 2000, ch. 142, § 1, p. 370; am. 2001, ch. 249, § 1, p. 901.]

STATUTORY NOTES

Prior Laws. — Former § 22-3406 was repealed. See Prior Laws, § 22-3401.

in paragraph (2)(a)(i) was added by S.L. 1990, ch. 269, which is codified as §§ 22-3401, 22-3406, and 22-3423.

Compiler's Notes. — The words "this act"

22-3406A. Responsibilities of chemical suppliers. — Any person who supplies or sells at retail a chemical and who knows or has reason to know that the chemical will be applied by chemigation shall sell chemicals only to licensed professional or private applicators with a chemigation category. [I.C., § 22-3406A, as added by 1999, ch. 69, § 6, p. 180.]

22-3406B. Chemigator responsibilities. — The chemigator shall be responsible for assuring that the irrigation system and chemigation equipment functions properly. [I.C., § 22-3406B, as added by 1999, ch. 69, § 7, p. 180.]

22-3407. Requalification. — The director may renew any applicant's license or permit issued under the provisions of this act provided the applicant has met the requirements imposed by the director to ensure that the applicant continues to meet the requirements of changing technology and to assure the proper and safe use of pesticides or chemicals. [I.C., § 22-3407, as added by 1976, ch. 190, § 2, p. 688; am. 1999, ch. 69, § 8, p. 180.]

STATUTORY NOTES

Prior Laws. — Former § 22-3407 was repealed. See Prior Laws, § 22-3401.

Compiler's Notes. — For the words "this act", see Compiler's Notes, § 22-3401.

22-3407A. Use of irrigation system for chemigation — Compliance with standards and requirements. — Any person who utilizes an irrigation system for chemigation shall comply with any standards and requirements which are established pursuant to section 22-3421, Idaho Code, and shall be certified and licensed as provided in this chapter. [I.C., § 22-3407A, as added by 1999, ch. 69, § 9, p. 180.]

22-3407B. Department to compile list. — The department shall compile a list of the types of chemigation systems or portions thereof which may be used by persons to apply chemicals through an irrigation system in accordance with the rules promulgated under section 22-3421, Idaho Code. This list shall be made public and constitutes state recognition of a chemigation system. [I.C., § 22-3407B, as added by 1999, ch. 69, § 10, p. 180.]

22-3408. Stop sale, use or removal order and chemigation stop work order. — (1) The department may issue and enforce a written stop sale, use or removal order to the owner or custodian of any pesticide or device to hold such pesticide or device at a designated place when the department finds such pesticide or device being distributed in violation of

any of the provisions of this act or rules, or is likely to cause unreasonable adverse effects on the environment. The director shall release the pesticide or device by written order when the owner or custodian has complied with all of the provisions of this act and rules.

(2) The department may issue and enforce a written or printed chemigation stop work order to any person engaged in, conducting or carrying on chemigation when the department finds the chemigation is in violation of the provisions of this chapter or any rules promulgated pursuant to this chapter.

(3) The chemigation stop work order shall be in effect until the provisions of this chapter or rules promulgated pursuant to this chapter have been complied with. [I.C., § 22-3408, as added by 1976, ch. 190, § 2, p. 688; am. 1996, ch. 22, § 7, p. 41; am. 1999, ch. 69, § 11, p. 180.]

STATUTORY NOTES

Prior Laws. — Former § 22-3408 was repealed. See Prior Laws, § 22-3401.

Compiler's Notes. — For the words "this act", see Compiler's Notes, § 22-3401.

22-3409. Denial, suspension, or revocation of a license or permit.

— The director is authorized subsequent to a hearing in accordance with the provisions of chapter 52, title 67, Idaho Code, to deny, suspend, revoke or modify any license or permit provided for in this act in any case in which he finds that the holder of an applicator's license, operator's license or permit has been convicted or is subject to a final order imposing a civil penalty under Section 14, Federal Insecticide, Fungicide, Rodenticide Act, or that there has been a failure or refusal to comply with the provisions of this act or rules promulgated by the director. [I.C., § 22-3409, as added by 1976, ch. 190, § 2, p. 688; am. 1996, ch. 22, § 8, p. 41.]

STATUTORY NOTES

Prior Laws. — Former § 22-3409 was repealed. See Prior Laws, § 22-3401.

Compiler's Notes. — For the words "this act", see Compiler's Notes, § 22-3401.

Federal References. — Section 14 of Federal Insecticide, Fungicide, Rodenticide Act is compiled as 7 U.S.C.S. § 136L.

22-3410. Reciprocity. — The director may at his discretion issue a license or permit without examination to a nonresident who is licensed or certified in another jurisdiction where the requirements are substantially in accordance with the provisions of this act. [I.C., § 22-3410, as added by 1976, ch. 190, § 2, p. 688.]

STATUTORY NOTES

Prior Laws. — Former § 22-3410 was repealed. See Prior Laws, § 22-3401.

Compiler's Notes. — For the words "this act", see Compiler's Notes, § 22-3401.

22-3411. Change of address or place of business. — Any person who has been issued a license or permit under the provisions of this act shall

immediately notify the department in writing when he changes his address or place of business. [I.C., § 22-3411, as added by 1976, ch. 190, § 2, p. 688; am. 1996, ch. 22, § 9, p. 41.]

STATUTORY NOTES

Prior Laws. — Former § 22-3411 was repealed. See Prior Laws, § 22-3401.

Compiler's Notes. — For the words "this act", see Compiler's Notes, § 22-3401.

22-3412. Delegation of duties. — All authority vested in the director by virtue of the provisions of this act may with like force and effect be executed by designated employees of the department of agriculture as the director may from time to time designate for said purpose. [I.C., § 22-3412, as added by 1976, ch. 190, § 2, p. 688.]

STATUTORY NOTES

Prior Laws. — Former § 22-3412 was repealed. See Prior Laws, § 22-3401.

Compiler's Notes. — For the words "this act", see Compiler's Notes, § 22-3401.

22-3413. Container disposal. — Partially full or empty pesticide containers shall be disposed of as prescribed by the Idaho department of environmental quality and in accordance with federal regulations. [I.C., § 22-3413, as added by 1976, ch. 190, § 2, p. 688; am. 2001, ch. 103, § 4, p. 253.]

STATUTORY NOTES

Prior Laws. — Former § 22-3413 was repealed. See Prior Laws, § 22-3401.

22-3414. Inspection. — (1) For the purpose of carrying out the provisions of this act the director may enter on any public or private premises at reasonable times in order to have access for the purpose of observing the use and application of pesticides, inspecting records that are required to be maintained by this act, chemigation equipment and standards, chemical use for chemigation, spraying equipment, storage facilities, disposal areas, investigating complaints of injury, inspection and sampling of land and sampling pesticides being distributed, offered for sale, applied or to be applied. The department shall conduct, or make provision to conduct, at least two hundred fifty (250) annual chemigation system inspections to assure the effectiveness of the chemigation system from keeping chemicals out of surface and ground water.

(2) Should the director be denied access to any land where such access was sought for the purposes set forth in this act, he may apply to any court of competent jurisdiction for a search warrant authorizing access to such land for said purposes. The court may, upon such application, issue the search warrant for the purposes requested. [I.C., § 22-3414, as added by 1976, ch. 190, § 2, p. 688; am. 1999, ch. 69, § 12, p. 180.]

STATUTORY NOTES

Compiler's Notes. — Former § 22-3414 was repealed. See Prior Laws, § 22-3401. For the words "this act", see Compiler's Notes, § 22-3401.

22-3415. Fees collected — Disposition. — All fees collected under the provisions of this act shall be deposited with the state treasurer and be credited to the pesticide fund of the department of agriculture to be used only for carrying out the provisions of this act. [I.C., § 22-3415, as added by 1976, ch. 190, § 2, p. 688.]

STATUTORY NOTES

Prior Laws. — Former § 22-3415 was repealed. See Prior Laws, § 22-3401. **Compiler's Notes.** — For the words "this act", see Compiler's Notes, § 22-3401.

22-3416. Cooperation with other agencies. — The director is authorized to cooperate with and enter into agreements with any other state or federal agency in order to carry out the provisions of this act and to assure uniformity of rules and regulations. [I.C., § 22-3416, as added by 1976, ch. 190, § 2, p. 688; am. 1996, ch. 22, § 10, p. 41.]

STATUTORY NOTES

Prior Laws. — Former § 22-3416 was repealed. See Prior Laws, § 22-3401. **Compiler's Notes.** — For the words "this act", see Compiler's Notes, § 22-3401.

22-3417. Damage claims. — (1) Any individual suffering loss or damage resulting from the use or application by others of any pesticide must file with the department a written report of loss which contains but is not limited to the following information:

- (a) The name and address of the claimant; and
- (b) the type of property alleged to be damaged; and
- (c) the name of the individual applying the pesticide and allegedly responsible; and
- (d) the name of the owner or lessee of the property for whom such application of pesticide was made.

This report must be filed within sixty (60) days of the occurrence of the alleged damage, or prior to the harvest of more than twenty-five percent (25%) of such damaged crop.

(2) The filing of such report or the failure to file such a report need not be alleged in any complaint which might be filed in a court of law, and the failure to file the report shall not be considered a bar to the maintenance of any criminal or civil action.

(3) The failure to file such a report shall not be a violation of this act.

(4) The department may investigate and determine the nature and extent of the alleged damage.

(5) The department shall prepare and file in its office a report of its investigation.

(6) Copies of the report made by the department may be given upon request to individuals who are financially interested in the matter. [I.C., § 22-3417, as added by 1976, ch. 190, § 2, p. 688.]

STATUTORY NOTES

Compiler's Notes. — For the words "this act", see Compiler's Notes, § 22-3401.

22-3417A. Liability limited. — There shall be no liability on the part of and no action for damages against any aerial pesticide applicator for the noise of application in the vicinity of a ratite farm if the applicator notifies the owner of the ratites not less than twenty-four (24) hours nor more than forty-eight (48) hours prior to the application. Provided however, that the applicator shall follow all federal aviation administration rules and regulations and all state statutes and rules regarding aerial applications. The provisions of this section shall not limit liability for harassment or willful violations of state or federal law or rules or regulations promulgated pursuant to those laws. [I.C., § 22-3417A, as added by 1995, ch. 217, § 1, p. 755.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1995, ch. 217 declared an emergency. Approved March 17, 1995.

22-3418. Restricted pesticide use. — (1) The director may by rule restrict or prohibit the use of pesticides if he finds that the labeled use of such pesticides requires the rules restricting their use are necessary to prevent injury to land, people, animals, crops or the environment other than the pests of vegetation which they are intended to destroy.

(2) The areas affected, and the time and conditions of use of such restricted-use pesticides shall be prescribed by rule. [I.C., § 22-3418, as added by 1976, ch. 190, § 2, p. 688; am. 1996, ch. 22, § 11, p. 41.]

22-3419. Procedure for establishing a restricted area. — (1) The director may upon his own initiative, or upon the petition of a number of owners, lessees or operators of land in an area within a county or two (2) or more contiguous counties in the state may, if it is deemed necessary, issue a proposal to establish a restricted area. The proposal shall set forth the boundaries of the area and the rules proposed to govern the use of pesticides. The director shall hold a hearing in accordance with the provisions of the administrative procedure act, chapter 52, title 67, Idaho Code, at a place in reasonable proximity to the proposed area. As soon as possible after completion of the hearing, the director shall make rules applicable thereto or refuse to take such action. The order shall be based on substantial evidence of record at the hearing and shall include findings of fact upon which it is based; Provided, however, that whenever twenty-five (25) or more landowners, representing at least seventy percent (70%) of the

acres of land situated within the proposed area, shall sign a petition requesting that a referendum be held, the director shall then conduct a referendum as set forth in subsection (2) of this section.

(2) Whenever in the judgment of the director, the need for the creation of a restricted area cannot be adequately determined by the director after investigation, the director shall conduct a referendum on this question of necessity, by ballot in the area concerned at a public hearing, after notice, setting the time and place, once each week for two (2) weeks before the hearing has been published in a newspaper of general circulation in the area affected. Any person owning, leasing or operating three (3) acres or more within the proposed area is eligible to vote in the referendum. Unless the votes cast in favor of the creation of a restricted area constitute a two-thirds (2/3) majority of those voting, the area shall not be created. If there is such majority, the director shall then issue a proposal in accordance with subsection (1) of this section. [I.C., § 22-3419, as added by 1976, ch. 190, § 2, p. 688; am. 1996, ch. 22, § 12, p. 41.]

22-3420. Prohibited acts. — No person shall:

(1) Use a pesticide in a manner inconsistent with its labeling except as provided for by rule.

(2) Make pesticide recommendations in a manner inconsistent with its labeling except as provided for by rule.

(3) Make false or misleading claims through any media relating to the effect of pesticides or application methods to be utilized.

(4) Operate a faulty or unsafe pesticide spray apparatus, aircraft, or other application device or equipment.

(5) Operate a faulty or unsafe chemigation system.

(6) Apply ineffective or improper pesticides.

(7) Make false, misleading or fraudulent records, reports or application forms required by the provisions of this act.

(8) Apply pesticides in a faulty, careless, or negligent manner.

(9) Refuse or neglect to keep and maintain records required by the provisions of this act, or to make reports when and as often as required.

(10) Distribute, sell or offer for sale any pesticide or device which is misbranded.

(11) Formulate, distribute, sell or offer for sale any pesticide which is adulterated.

(12) Distribute, sell or offer for sale any pesticide except in the manufacturer's original unbroken container.

(13) Refuse or neglect to comply with any limitations or restrictions placed on a license or permit issued under the provisions of this act.

(14) Refuse or neglect to comply with any other provisions of this act or rule, or any lawful order of the director.

(15) Aid or abet a licensed or an unlicensed person to evade the provisions of this act, conspire with such licensed or an unlicensed person to evade the provisions of this act, or allow one's license or permit to be used by another person.

(16) Make false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land.

(17) Impersonate any federal, state, county or city inspector or official.

(18) Use or supervise the use of any restricted-use pesticide, or any state restricted-use pesticide without having complied with the licensing requirements pursuant to this act, and such other restrictions as had been determined by the director as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator, persons, or land, provided, that a person who is not a certified applicator but an employee of a licensed private applicator may use a restricted-use pesticide or a state restricted-use pesticide under the direct supervision of the licensed private applicator unless otherwise prescribed by the labeling of the pesticide.

(19) Use or supervise the use of a chemical in a chemigation system without having complied with the licensing requirements pursuant to this act and rules, and such other restrictions as have been determined by the director. A person who is not a certified applicator but an employee of a licensed private applicator may use chemicals under the direct supervision of a licensed private applicator unless otherwise prescribed by the labeling of the chemical.

(20) Chemigate without installing the proper chemigation equipment to protect against surface or ground water contamination.

(21) Fail to abide by the conditions of a stop sale, use or removal order, or chemigation stop work order.

(22) Offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or receive and, having so received, deliver or offer to deliver, chemicals for chemigation to an unlicensed person. [I.C., § 22-3420, as added by 1976, ch. 190, § 2, p. 688; am. 1993, ch. 54, § 5, p. 142; am. 1996, ch. 22, § 13, p. 41; am. 1999, ch. 69, § 13, p. 180.]

STATUTORY NOTES

Compiler's Notes. — For the words “this act”, see Compiler's Notes, § 22-3401.

The words “this act”, in subsection (19), refer to S.L. 1999, ch. 69 compiled as §§ 22-

3401, 22-3404, 22-3406 to 22-3408, 22-3414, 22-3420, and 22-3422. This reference should read “this chapter”, being chapter 34, title 22, Idaho Code.

JUDICIAL DECISIONS

Negligence Per Se.

In negligence action by farmer against pesticide contractor, district court did not err when it instructed the jury that a violation of

the standard of conduct defined in subsections (1) and (2) of this section constituted negligence per se. *Obendorf v. Terra Hug Spray Co. Inc.*, 145 Idaho 892, 188 P.3d 834 (2008).

22-3421. Adoption and scope of rules. — (1) The director is authorized to adopt appropriate rules for carrying out the purpose and provisions of this act including, but not limited to, rules providing for:

- (a) The collection and examination of samples of pesticides or devices; and
- (b) the safe handling, transportation, storage, display, distribution and disposal of pesticides and their containers; and
- (c) procedures in making pesticide recommendations; and
- (d) procedures for obtaining permits; and

- (e) regulating the labeling of devices; and
- (f) procedures to take possession and dispose of canceled, suspended, or otherwise unusable pesticides held by persons. For the purpose of this section, the department may become a hazardous waste generator, and may set fees to partially offset an agricultural chemical waste disposal program's cost; and
- (g) antipollution devices, chemigation equipment requirements, performance standards and installation requirements; and
- (h) listing of the sites where chemigation will be conducted by the applicator.

(2) Such rules shall be promulgated in accordance with chapter 52, title 67, Idaho Code. [I.C., § 22-3421, as added by 1976, ch. 190, § 2, p. 688; am. 1992, ch. 43, § 2, p. 143; am. 1996, ch. 22, § 14, p. 41; am. 1999, ch. 69, § 14, p. 180.]

22-3422. Penalties for operating without license. — Any person operating as a professional or private applicator or dealer without a license shall forfeit to the state for each day's operation one hundred dollars (\$100) as a civil penalty and such operation may be enjoined upon complaint of the director. [I.C., § 22-3422, as added by 1976, ch. 190, § 2, p. 688; am. 1996, ch. 22, § 15, p. 41.]

22-3423. Penalty for violations. — (1) Any person who shall forge, alter, counterfeit, simulate or falsely represent, or who shall without proper authority use any license issued by the director under this act, or who shall violate or fail to comply with any provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisoned in the county jail for not less than three (3) months nor more than twelve (12) months or be subject to both such fine and imprisonment.

(2) Any person who violates or fails to comply with any provision of this act or any rules promulgated under this act may be assessed a civil penalty by the department or its duly authorized agent of not more than three thousand dollars (\$3,000) for each offense and shall be liable for reasonable attorney fees. Assessment of a civil penalty may be made in conjunction with any other department administrative action. No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act. If the department is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court. Any person against whom the department has assessed a civil penalty under this section may, within thirty (30) days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred. Moneys collected for violation of a rule shall be deposited in the state treasury and credited to the pesticide account of the department.

(3) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when he believes that the public interests will be best served by suitable warnings or other administrative action. [I.C., § 22-3423, as added by 1976, ch. 190, § 2, p. 688; am. 1990, ch. 269, § 3, p. 759; am. 1996, ch. 22, § 16, p. 41.]

STATUTORY NOTES

Cross References. — Idaho administrative procedure act, § 67-5201 et seq.

Compiler's Notes. — For the words "this act", see Compiler's Notes, § 22-3401.

22-3424. Review of action of director. — Any person who has exhausted all administrative remedies available within the department and who is aggrieved by a final decision in a contested case is entitled to judicial review in accordance with the provisions of the administrative procedure act, chapter 52, title 67, Idaho Code. The review may be obtained by filing in the district court within thirty (30) days' notice of the action of the director, a written petition praying that such action be set aside. A copy of such petition shall forthwith be delivered to the director, and within thirty (30) days thereafter the director shall certify and file in the district court of the area affected a transcript of any record pertaining thereto, including a transcript of evidence received at any hearing of referendum. The district court shall give notice, by United States mail, to the director of the department of agriculture, and to the petitioner or petitioners, of the time and place at which the court will hear such petition, at which time any interested party may be heard. Upon completion of the hearing the court shall affirm, set aside or modify the action of the director, except that the findings of the director as to the facts, if supported by substantial evidence, shall be conclusive. [I.C., § 22-3424, as added by 1976, ch. 190, § 2, p. 688; am. 1996, ch. 22, § 17, p. 41; am. 2001, ch. 183, § 4, p. 613.]

22-3425. Severability. — If any clause, sentence, paragraph, or part of this act shall, for any reason, be adjudged by a competent court of jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which said judgment shall have been rendered. [I.C., § 22-3425, as added by S.L. 1976, ch. 190, § 2, p. 688.]

STATUTORY NOTES

Compiler's Notes. — For the words "this act", see Compiler's Notes, § 22-3401.

ch. 190, provided that the act should take effect on and after October 21, 1976.

Effective Dates. — Section 3 of S.L. 1976,

22-3426. Uniformity of state pesticide rule. — Notwithstanding any other provision of law to the contrary, no city, county, taxing district or other political subdivision of this state shall adopt or continue in effect any ordinance, rule, regulation, resolution or statute regarding pesticide sale, use, or application including without limitation: registration, notification of

use, advertising and marketing, distribution, application methods, applicator training and certification, storage, transportation, disposal, disclosure of confidential information or product composition. Nothing contained in this section shall prohibit or limit fire prevention personnel or fire extinguishing personnel of a city, county or fire protection district from conducting inspections pursuant to or enforcing the International Fire Code. [IC., § 22-3426, as added by 1994, ch. 102, § 1, p. 231; am. 1995, ch. 106, § 1, p. 339; am. 1996, ch. 22, § 18, p. 41; am. 2002, ch. 86, § 2, p. 195.]

STATUTORY NOTES

Compiler’s Notes. — In 2003, the international fire code institute merged with other organizations into the international code council. See <http://www.iccsafe.org>.

Effective Dates. — Section 2 of S.L. 1995, ch. 106 declared an emergency. Approved March 13, 1995.

CHAPTER 35

PEA AND LENTIL COMMISSION

SECTION.	SECTION.
22-3501. Declaration of policy.	22-3511. Commission accepting grants, donations and gifts.
22-3502. Pea and lentil commission created — Members.	22-3512. Bonds of administrator, agents or employees.
22-3503. Definitions.	22-3513. Establishment of administrator’s office.
22-3504. Qualification of grower members.	22-3514. State not liable for acts or omissions of commission or of its employees.
22-3505. Qualification of dealer and processor members.	22-3515. Imposition of assessment.
22-3506. Selection of commission — Terms of members — Vacancies.	22-3516. Delivery of invoice vouchers to growers.
22-3507. Compensation of members.	22-3517. Payment of assessment — Disposition of receipts.
22-3508. Chairman and administrator of commission.	22-3518. Penalties.
22-3509. Meetings of commission — Quorum.	
22-3510. Duties and powers of commission.	

22-3501. Declaration of policy. — It is to the interest of all the people that the abundant natural resources of Idaho be protected, fully developed and uniformly distributed. Among the agricultural industries of the state of Idaho that contribute to the economic welfare of the state is the welfare and well-being of the people of this state by providing means for the development of markets, production research, new product development and promotion of dry peas and lentils grown in Idaho. [1965, ch. 106, § 1, p. 192.]

STATUTORY NOTES

Compiler’s Notes. — The second sentence of this section appears to be incomplete.

22-3502. Pea and lentil commission created — Members. — There is hereby created and established in the department of self-governing agencies the “Idaho Pea and Lentil Commission” to be composed of seven (7) members. Five (5) of the members shall be growers and two (2) of the members shall be processors or dealers. The dean of the College of

Agriculture, University of Idaho, or his duly authorized representative, shall be an ex officio member without vote of the commission. [1965, ch. 106, § 2, p. 192; am. 1974, ch. 13, § 12, p. 138.]

STATUTORY NOTES

Effective Dates. — Section 194 of S.L. 1974, ch. 13 provides that the act should take effect on and after July 1, 1974.

22-3503. Definitions. — As used in the act, unless the context requires otherwise:

(1) The term “peas and lentils” means dry peas, lentils, chickpeas and garbanzos grown in the state of Idaho except it does not include wrinkled varieties of peas grown for seed or chickpeas or garbanzos grown south of the Salmon River.

(2) “Commercial channels” means the sale of peas or lentils for use as food, feed, seed, or any industrial or chemurgic use, when sold to any commercial buyer, user, dealer, processor, cooperative, or to any person, public or private, who resells any pea or lentil product produced from peas or lentils.

(3) “Commission” means the Idaho pea and lentil commission.

(4) “First purchaser” means any person, group, association, partnership, or corporation that buys peas or lentils from the grower in the first instance, or any lienholder, public or private, including the commodity credit corporation, who may possess peas or lentils from the grower under any lien.

(5) “Grower” means any landowner personally engaged in growing peas or lentils, a tenant of the landowner personally engaged in growing peas or lentils, or both the owner and the tenant jointly, and includes a person, partnership, association, corporation, cooperative, trust, sharecropper or any and all other business units, devices and arrangements, who has grown or marketed peas or lentils in either of the preceding two (2) years.

(6) “Sale” includes any pledge, mortgage, trade, or contract device, or delivery of peas or lentils for sale or payment after harvest to any person, public or private.

(7) “Deliver” means placing of peas or lentils into the primary channels of trade.

(8) “Dealer” means any person, group, association, partnership or corporation which acts as principal or agent or otherwise in selling, marketing, warehousing, or distributing dry peas or lentils not produced by such person, group, association, partnership or corporation.

(9) “Processor” means any person, group, association, partnership or corporation which acts as principal or agent or otherwise in processing dry peas or lentils not produced by such person, group, association, partnership or corporation. [1965, ch. 106, § 3, p. 192; am. 1997, ch. 154, § 1, p. 436.]

STATUTORY NOTES

Compiler's Notes. — The words “the act” refer to S.L. 1965, ch. 106, compiled as §§ 22-3501 to 22-3518.

The commodity credit corporation (CCC) is a government-owned and operated entity that was created to stabilize, support, and protect

farm income and prices. CCC also helps maintain balanced and adequate supplies of agricultural commodities and aids in their orderly distribution.

CCC was incorporated October 17, 1933, under a Delaware charter. It was initially managed and operated in close affiliation with the reconstruction finance corporation, which funded its operations.

On July 1, 1939, CCC was transferred to the United States Department of Agriculture (USDA). It was reincorporated on July 1, 1948, as a federal corporation within USDA by the commodity credit corporation charter act (62 Stat. 1070; 15 U.S.C. 714), as amended through P.L. 110-246, effective May 22, 2008.

22-3504. Qualification of grower members. — Grower members of the commission shall be selected because of their ability and disposition to serve the state's interest and for knowledge of the state's natural resources. Members shall be citizens over twenty-five (25) years of age, residents of the state who have been actually engaged in growing peas or lentils in this state for at least three (3) of the previous five (5) years, and who derive a substantial portion of their income from growing peas or lentils in the state of Idaho. [1965, ch. 106, § 4, p. 192.]

22-3505. Qualification of dealer and processor members. — Dealer and processor members of the commission shall be residents of the state of Idaho and be selected because of their ability and disposition to serve the state's interest and for knowledge of the state's natural resources. They shall be practical dealers or processors of dry peas or lentils and shall be citizens over twenty-five (25) years of age and who have been, either individually or as officers or employees of a corporation, firm, partnership, association, or other business having a place of business within the state of Idaho and actually engaged in the processing, selling, marketing or distributing of dry peas or lentils within the state of Idaho for a period of five (5) years and has during that period derived a substantial portion of its income therefrom. [1965, ch. 106, § 5, p. 192.]

22-3506. Selection of commission — Terms of members — Vacancies. — (1) The governor shall appoint seven (7) persons to the commission based upon submitted nominee petitions. Two (2) members shall be dealers or processors and five (5) members shall be growers.

(a) Growers, dealers and processors shall nominate from among themselves, by petition, not more than two (2) names for each position to be filled on the commission.

(b) In the case of grower members, petitions shall be signed by not less than fifteen (15) qualified growers. The nominations made shall be, as near as practicable, representative of lentils, dry peas and chickpeas.

(c) Petitions for dealer or processor members shall be signed by not less than three (3) qualified processors or dealers.

(2) The first members of the commission shall draw lots to determine their respective terms of office. Two (2) of the original members shall serve for one (1) year; two (2) of the original members shall serve for two (2) years; and three (3) of the original members shall serve for three (3) years, provided however, that the terms of office of both dealer members of the commission shall not expire in the same year. The term of office of members of the commission thereafter shall be three (3) years, commencing on July 1.

(3) Members of the commission may not serve more than two (2) consecutive terms, nor may they hold or file for any elective political office while a member of the commission.

(4) In the event there are vacancies in the commission, it shall be the duty of the western pea and lentil growers' association, as the designated representative of Idaho growers of dry peas, lentils and chickpeas or, in the case of the dealer positions, the U.S. pea and lentil trade association as the designated representative of the dealers and processors of Idaho, to submit to the governor not more than two (2) qualified names for each vacancy supported by the proper nominating petitions. The governor shall make the appointment or appointments to fill each vacancy. The appointment shall be for the remainder of the term for that position. [1965, ch. 106, § 6, p. 192; am. 2009, ch. 129, § 1, p. 408.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 129, rewrote the section, revising provisions relating to the selection and terms of office of commission members and revising

provisions relating to vacancies on the commission and providing that appointments to fill vacancies shall be for the remainder of the term for that position.

22-3507. Compensation of members. — Members of the commission shall be compensated as provided by section 59-509(b), Idaho Code. [1965, ch. 106, § 7, p. 192; am. 1980, ch. 247, § 16, p. 582; am. 2009, ch. 128, § 1, p. 407.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 128, substituted "59-509(b)" for "59-509(d)."

22-3508. Chairman and administrator of commission. — The commission shall elect a chairman and shall employ such administration as is necessary, including, but not limited to full-time or part-time administrator. [1965, ch. 106, § 8, p. 192.]

22-3509. Meetings of commission — Quorum. — The commission shall meet at least once every three (3) months regularly and at such other times as called by the chairman. The chairman may call special meetings of the commission at any time or place after having given five (5) days' written notice except by unanimous consent of all members of the commission. A majority of the commission members shall constitute a quorum for all business. [1965, ch. 106, § 9, p. 192.]

22-3510. Duties and powers of commission. — (1) Consistent with the general purposes of this chapter, the commission shall establish the policies to be followed in the accomplishments of such purposes.

(2) In the administration of the act, the commission shall have the following duties, authorities and powers:

(a) To conduct a campaign of research, education and publicity.

- (b) To find new markets for pea and lentil products.
- (c) To give, publicize and promulgate reliable information showing the value of peas and lentils for any purpose for which they are found useful and profitable.
- (d) To make public and encourage the widespread national and international use of the special kinds of pea and lentil products produced from all varieties of peas and lentils grown in Idaho.
- (e) To investigate and participate in studies of the problems peculiar to the producers of peas and lentils in Idaho.
- (f) To take such action as the commission deems necessary or advisable in order to stabilize and protect the pea and lentil industry of the state.
- (g) To sue and be sued.
- (h) To enter into such contracts as may be necessary or advisable.
- (i) To appoint and employ all necessary officers, agents and other personnel, including experts in agriculture and the publicizing of the products thereof, and to prescribe their duties and fix their compensation.
- (j) To make use of such advertising means and methods as the commission deems advisable and to enter into contracts and agreements for research and advertising within and without the state.
- (k) To cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state or by national law, engaged in work or activities similar to the work and activities of the commission, and to enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of research, education and publicity and reciprocal enforcement.
- (l) To lease, purchase or own the real or personal property deemed necessary in the administration of this chapter.
- (m) To prosecute in the name of the state of Idaho any suit or action for collection of the assessment provided for in this chapter.
- (n) To adopt, rescind, modify and amend all necessary and proper orders, resolutions and regulations for the procedure and exercise of its powers and the performance of its duties.
- (o) To incur indebtedness and repay the same, and carry on all business activities.
- (p) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, collections, receipts, deposits, withdrawals, disbursements, paid outs, moneys and other financial transactions made and done pursuant to this order. Such records, books and accounts shall be audited subject to lawful, sound procedures and methods of accounting at least annually and a copy of such audit shall be delivered within thirty (30) days after completion thereof to the governor, commissioner of agriculture, director of legislative services and the commission. The books, records and accounts shall be open to inspection by the state controller and public at all times.
- (q) To make a full and complete report available to all Idaho pea and lentil producers annually, and once every five (5) years, commencing May 1, 1970, poll each grower as to the advisability of continuing the commission. If a majority of the growers representative of a majority of the

pounds produced request a repeal of this act, the commission shall at the next session of the legislature request a repeal. [1965, ch. 106, § 10, p. 192; am. 1971, ch. 23, § 1, p. 54; am. 1994, ch. 180, § 27, p. 420; am. 2003, ch. 32, § 9, p. 115.]

STATUTORY NOTES

Cross References. — State controller, § 67-1001 et seq.

Compiler's Notes. — For words "the act" and "this act", see Compiler's Notes, § 22-3503.

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the

amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 27 of S.L. 1994, ch. 180 became effective January 2, 1995.

22-3511. Commission accepting grants, donations and gifts. —

The commission may accept grants, donations and gifts of funds from any source for expenditure for any purpose consistent with this act which may be specified as a condition of any grant, donation or gift. All funds received under the provisions of this act shall be paid to the Idaho pea and lentil commission and shall be deposited in a bank account in the name of the Idaho pea and lentil commission, and such moneys shall be kept in such Idaho pea and lentil commission account and made available for defraying the expenses of the commission in carrying out the provisions of this act. [1965, ch. 106, § 11, p. 192; am. 1971, ch. 23, § 2, p. 54.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3503.

22-3512. Bonds of administrator, agents or employees. — The administrator, or any agent or employee appointed by the commission shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. The cost of the bond is an administrative expense under this act. [1965, ch. 106, § 12, p. 192; am. 1971, ch. 136, § 9, p. 522.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3503.

22-3513. Establishment of administrator's office. — For the convenience of the majority of those most likely to be affected in the administration of this act, the commission may establish and maintain an office for the administrator within the state of Idaho. [1965, ch. 106, § 13, p. 192.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3503.

22-3514. State not liable for acts or omissions of commission or of its employees. — The state of Idaho is not liable for the acts or omissions of the commission or any member thereof or any officer, agent or employee thereof. [1965, ch. 106, § 14, p. 192.]

22-3515. Imposition of assessment. — (1) From and after July 1, 1997, there is hereby levied and imposed an assessment of an amount not to be less than one percent (1%) nor to exceed two percent (2%) of the net receipts at the first point of sale, to be deducted by the first purchaser from the price paid to the grower on dry peas or lentils grown in Idaho, or chickpeas or garbanzos grown north of the Salmon River, sold after July 1, 1997, dockage free weight, and sold or contracted through commercial channels, and each and every crop grown thereafter. The assessment provided in this subsection shall be paid at such time or times as the commission may by rule prescribe.

(2) The assessment shall be levied and assessed to the grower at the time of delivery for sale and shall be deducted by the first purchaser from the price paid to the grower at the time of sale or in case of a lienholder who may possess such peas or lentils under his lien, the assessment shall be deducted by the lienholder from the proceeds of the claims secured by such lien at the time the peas or lentils are pledged or mortgaged. The assessment shall be deducted as provided in this section whether the peas or lentils are stored in this or any other state. The commission may, however, permit any federal corporation, such as the commodity credit corporation, to waive its responsibility for the collection of the assessment, provided the amount of the assessment is one dollar (\$1.00) or less.

(3) It shall be within the discretion of the commission to establish the amount of the tax to be levied as provided in subsection (1) of this section. The decision whether to adjust the amount of the tax to be levied and the time for which the adjusted levy shall be in effect shall require the vote of a majority of the commission members.

(4) The assessment shall be levied on peas and lentils grown and delivered on seed or grower contracts. The assessment shall be levied and assessed to the grower at the time of settlement and shall be deducted by the seed company, corporation, cooperative, partnership, or person from the price paid to the grower at the time of settlement for fulfillment of conditions as set forth in grower contracts.

(5) The assessment shall not be levied on peas and lentils retained and used by the grower for his own seed and feed.

(6) The assessment constitutes a lien prior to all other liens and encumbrances upon such peas or lentils except liens which are declared prior by operation of a statute of this state. [1965, ch. 106, § 15, p. 192; am. 1971, ch. 23, § 3, p. 54; am. 1975, ch. 5, § 1, p. 9; am. 1981, ch. 1, § 1, p. 3; am. 1983, ch. 23, § 1, p. 62; am. 1985, ch. 62, § 1, p. 124; am. 1986, ch. 27, § 1, p. 79; am. 1997, ch. 154, § 2, p. 436; am. 2001, ch. 298, § 1, p. 1077.]

STATUTORY NOTES

Compiler's Notes. — The commodity credit corporation (CCC) is a government-owned and operated entity that was created to stabilize, support, and protect farm income and prices. CCC also helps maintain balanced and adequate supplies of agricultural commodities and aids in their orderly distribution.

CCC was incorporated October 17, 1933, under a Delaware charter. It was initially

managed and operated in close affiliation with the reconstruction finance corporation, which funded its operations.

On July 1, 1939, CCC was transferred to the United States Department of Agriculture (USDA). It was reincorporated on July 1, 1948, as a federal corporation within USDA by the commodity credit corporation charter act (62 Stat. 1070; 15 U.S.C. 714), as amended through P.L. 110-246, effective May 22, 2008.

22-3516. Delivery of invoice vouchers to growers. — (1) The purchaser, at the time of settlement, shall make and deliver a copy of each settlement voucher for each purchaser to the grower.

(2) The reports to the commission shall be on forms and in such numbers as prescribed and supplied by the commission and shall show at least:

- (a) The name or names and address or addresses of the grower and seller.
- (b) The name and address of purchaser.
- (c) The number of pounds of peas and lentils sold, varieties of peas and/or lentils and the rate of assessment.
- (d) The report shall be legibly written and shall have no corrections or erasures on the face thereof.

(3) Unlawful or willful alteration of an invoice shall constitute a misdemeanor. [1965, ch. 106, § 16, p. 192; am. 1971, ch. 23, § 4, p. 54.]

22-3517. Payment of assessment — Disposition of receipts. —

(1) The assessment imposed in this act shall be paid by the first purchaser to the commission. The commission shall receipt the purchaser thereof and promptly deposit the moneys in a bank account in the name of the Idaho pea and lentil commission. The commission may adopt, rescind, modify and amend regulations not inconsistent with this act, related to the payment and collection of the assessment provided for in the act.

(2) All moneys received under the provisions of this act shall be paid to the Idaho pea and lentil commission to be deposited into a bank account in the name of the Idaho pea and lentil commission and made available for defraying the expenses or repaying indebtedness of the commission in carrying out the provisions of this act.

(3) All salaries, costs and expenses incurred by the commission in performing its duties and the exercise of its powers under this act shall be paid out of such bank account of the Idaho pea and lentil commission.

(4) All moneys received by the commission from any source, except the amount of cash kept for each day's needs, shall be deposited as soon as possible in one (1) or more separate accounts in the name of the commission in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such accounts and such banks or trust companies.

(5) No moneys shall be withdrawn from or paid out of such accounts except upon order of the commission, and upon checks or other orders upon such accounts signed by such member of the commission as the commission

designates, and countersigned by such other member, officer or employee of the commission as the commission designates. A receipt, voucher or other written record, showing clearly the nature and items covered by the check or other order, shall be kept. [1965, ch. 106, § 17, p. 192; am. 1971, ch. 23, § 5, p. 54.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3503.

22-3518. Penalties. — Any person who shall violate or aid in the violation of any of the provisions of this act shall be guilty of a misdemeanor. [1965, ch. 106, § 18, p. 192; am. 1971, ch. 23, § 6, p. 54.]

STATUTORY NOTES

Cross References. — Penalty for misdemeanor when not otherwise provided, § 18-113.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3503.

Section 19 of S.L. 1965, ch. 106 provided as follows: "This act shall be liberally construed and if any part or portion thereof be declared invalid, or the application thereof to any person, circumstance or thing is declared invalid, the validity of the remainder of this act and, or the applicability thereof to any person, circumstance or thing shall not be affected thereby, and it is the intention of the legisla-

ture to preserve any and all parts of this act if possible."

Section 7 of S.L. 1971, ch. 23, transferred the pea and lentil commission fund and equipment, supplies, and personal property purchased therefrom from the state of Idaho to the pea and lentil commission.

Effective Dates. — Section 20 of S.L. 1965, ch. 106 declared an emergency. Approved March 8, 1965.

Section 8 of S.L. 1971, ch. 23 provided that the act should be in full force and effect from and after July 1, 1971.

CHAPTER 36

APPLE COMMISSION

SECTION.

- 22-3601. Purpose.
- 22-3602. Commission created — Qualification of members.
- 22-3603. Definitions.
- 22-3604. Commission members — Nomination and appointment.
- 22-3605. Powers and duties.
- 22-3606. Research — Advertising — Investigation.
- 22-3607. Deposit and disbursement of funds.
- 22-3608. Bonds.

SECTION.

- 22-3609. State not liable.
- 22-3610. Assessments — Packed — For processing.
- 22-3611. Assessment — Payment — Statement.
- 22-3612. Records.
- 22-3613. Assessment — Increase.
- 22-3614. Returns.
- 22-3615. Inspections.
- 22-3616. Penalty for violation.

22-3601. Purpose. — It is to the best interests of all the people of the state of Idaho that the abundant and natural resources of Idaho be protected, fully developed and uniformly distributed. It is in the public interest and within the exercise of the police power of the state to protect the public health; to prevent fraudulent practices; to provide the means for the development of markets; production research; and new product development and promotion of the apple industry. [1966 (2nd E.S.), ch. 17, § 1, p. 39.]

22-3602. Commission created — Qualification of members. —

There is hereby created in the department of self-governing agencies an Idaho apple commission, to be thus known and designated. The commission shall be composed of three (3) practical apple growers and two (2) practical apple dealers.

The three (3) grower members shall be citizens and residents of this state, over the age of twenty-five (25) years, each of whom is and has been actively engaged in the growing and producing of apples within the state of Idaho, and a major portion of his income from apples has been derived from growing apples.

The two (2) dealer members shall be persons who, either individually or as executive officers of a corporation, firm, partnership, association or cooperative organization are and have been actively engaged as dealers of apples within the state of Idaho, are citizens and residents of this state; are over the age of twenty-five (25) years, and a major portion of their income from apples has been derived from handling, packing, shipping, buying or selling apples, or acting as sales or purchasing agent, broker or factor of apples.

The qualifications of members of the commission as herein set forth must continue during their term of office. The commission shall elect its chairman. Each member of the commission shall be compensated as provided by section 59-509(d), Idaho Code. [1966 (2nd E.S.), ch. 17, § 2, p. 39; am. 1974, ch. 13, § 4, p. 138; am. 1980, ch. 247, § 17, p. 582.]

STATUTORY NOTES

Effective Dates. — Section 194 of S.L. 1974, ch. 13 provided the act should take effect on and after July 1, 1974.

22-3603. Definitions. — As used in this act, unless the context requires otherwise:

(1) "Commission" means the Idaho apple commission.

(2) "Grower" means any landowner personally engaged in growing apples, a tenant personally engaged in growing apples, or both the owner and the tenant jointly, and includes a person, partnership, association, corporation, cooperative organization, trust, sharecropper, or any and all other business units, devices and arrangements, that grow apples.

(3) "Dealer" means any person, partnership, association, corporation, cooperative or other business units and devices who first handles, packs, ships, buys or sells apples, or who acts as sales or purchasing agent, broker or factor of apples.

(4) "Ship" means to load apples into any mode of conveyance for transport in the channels of trade or to market.

(5) "Processor" and "Processing Plant" means every person, partnership, association, corporation, cooperative or other business units and devices to whom and every place to which apples are delivered for drying, freezing, dehydrating, canning, pressing, powdering, extracting, cooking and for use in producing a product or manufacturing a manufactured article.

(6) "District No. 1" shall consist of the following counties: Canyon, Ada, Owyhee, Elmore, Camas, Blaine, Gooding, Lincoln, Minidoka, Jerome, Twin Falls, Cassia, Power, Oneida, Bannock, Franklin, Bear Lake, Caribou, Bonneville, Madison, Teton, Jefferson, Fremont, Butte, Clark and Bingham.

(7) "District No. 2" shall consist of the following counties: Gem, Boise, Valley, Custer and Lemhi.

(8) "District No. 3" shall consist of the following counties: Payette, Washington, Adams, Idaho, Lewis, Nez Perce, Clearwater, Latah, Benewah, Shoshone, Kootenai, Bonner and Boundary.

(9) "Person" means any partnership, association, corporation, cooperative or other business units or devices. [1966 (2nd E.S.), ch. 17, § 3, p. 39.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" as §§ 22-3601 to 22-3606 and 22-3608 to refer to S.L. 1966 (2nd E.S.), ch. 17, compiled 22-3616.

22-3604. Commission members — Nomination and appointment.

— Grower and dealer members of the commission shall be selected as follows:

(a) Two (2) grower members shall be nominated for each grower vacancy that occurs, from which the governor shall appoint one (1). The first nominees shall be nominated in the following manner: The apple committee [commission] of the Idaho Horticultural Society shall conduct meetings in each of the three (3) districts referred to in section 22-3603, [Idaho Code,] and at such meetings the growers shall nominate two (2) growers for each district. The apple committee [commission] of the Idaho Horticultural Society shall call a general meeting of the Idaho apple dealers of the state of Idaho at such time and place as shall be decided by the committee for the purpose of nominating four (4) dealers, representative of the three (3) districts defined in subparagraphs (6), (7) and (8) of section 22-3603[, Idaho Code]. Notice of the meetings for the nomination of growers shall be by publication in one (1) newspaper published in the major apple producing county of the district in which said nominations are to be made, and the notice shall be published in two (2) issues of such newspaper, the first to be approximately thirty (30) days and the second approximately ten (10) days before said meeting. The notice shall state the purpose, time and place of said meeting. All meetings held for the selection of nominees shall be held prior to March 31st of the year the appointment or appointments are to be made.

(b) After the original appointments to the commission all subsequent appointments shall be conducted in the same manner, except that the meetings shall be called and conducted by the commission.

(c) The governor shall select from the nominees for each district one (1) grower member and from the four (4) nominees for dealers, two (2) members, as required by this act.

(d) The governor shall appoint five (5) persons to the commission based upon the nominating petitions. Three (3) shall be growers and two (2) shall be dealers, but each dealer-nominee must be from a different district.

The first members of the commission shall draw lots to determine their respective terms of office. Two (2) of the original members shall serve for one (1) year; two (2) of the original members shall serve for two (2) years; and one (1) of the original members shall serve for three (3) years. The term of office of members of the commission thereafter shall be three (3) years, commencing on July 1, 1966. Provided, however, that both dealer members of the commission terms of office shall not expire during the same year.

Members of the commission may not serve more than two (2) consecutive terms. Provided, upon serving two (2) consecutive terms, and the lapse of one (1) full term, such member may again be nominated and appointed to the commission.

In the event there are vacancies in the commission, through death, resignation or removal, it shall be the duty of the growers and dealers as provided in section 22-3604 [this section], to submit to the governor at least two (2) qualified names for each grower vacancy, and two (2) qualified names for each dealer vacancy for the district in which the vacancy occurred. The governor shall make the appointment or appointments to fill the vacancy. [1966 (2nd E.S.), ch. 17, § 4, p. 39.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions in subsection (a) were added by the compiler.

The bracketed words "this section" in the

last paragraph were inserted by the compiler.

For words "this act", see Compiler's Notes, § 22-3603.

22-3605. Powers and duties. — The Idaho apple commission shall have, but is not limited to, the following powers and duties:

- (1) To elect a chairman and such other officers as it deems advisable.
- (2) To appoint and employ, and at its pleasure discharge, all necessary agents, employees and professional personnel and other personnel, including experts in agriculture and the publicizing of the products thereof, and to prescribe their duties and fix their compensation.
- (3) To establish offices and incur expense and enter into contracts and to create such liabilities as may be reasonable for the proper administration and enforcement of this chapter.
- (4) To find new markets for apples and apple products.
- (5) To give, publicize and promulgate reliable information showing the value of apples and apple products for any purpose for which they are found useful and profitable.
- (6) To make public and encourage the widespread national and international use of apples and apple products.
- (7) To investigate and participate in studies of the problems peculiar to the growers of apples in the state of Idaho.
- (8) To take such action as to the commission seems necessary or advisable in order to promote the sale of apples and to protect the apple industry.
- (9) To enter into such contracts as may be necessary or advisable.
- (10) To make use of such advertising means and methods as the commission deems advisable and to enter into contracts and agreements for research and advertising within and without the state of Idaho.

(11) To cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state, or the United States government, engaged in work or activity similar to the work and activities of the commission, and to enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of research, education, product protection, publicity and reciprocal enforcement of these objectives.

(12) To investigate and prosecute in the name of the state of Idaho violations of this act; to investigate and prosecute in the name of the state of Idaho any suit or action for the collection of assessments as hereinafter provided, or to protect brands, marks, packages, brand names or trademarks being promoted by the commission.

(13) To do any and all things that will promote the sale of apples.

(14) To keep an accurate record of all of its dealings, which shall be open to inspection by the state controller.

(15) To sue and be sued.

(16) To adopt and from time to time alter, rescind, modify and/or amend all proper and necessary rules and orders for the exercise of its powers and performance of its duties under this act. [1966 (2nd E.S.), ch. 17, § 5, p. 39; am. 1994, ch. 180, § 28, p. 420.]

STATUTORY NOTES

Cross References. — State controller, § 67-1001 et seq.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3603.

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the

amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 28 of S.L. 1994, ch. 180 became effective January 2, 1995.

22-3606. Research — Advertising — Investigation. — The commission shall provide for and conduct a comprehensive and extensive research, advertising and educational campaign as continuous as the crop, sales and market conditions reasonably require. It will investigate and ascertain the needs of growers, conditions of the market and extent to which public convenience and necessity require research and advertising to be conducted. [1966 (2nd E.S.), ch. 17, § 6, p. 39.]

22-3607. Deposit and disbursement of funds. — (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited biennially by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the director of legislative services and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code. [I.C., § 22-3607, as added by 1988, ch. 192, § 2, p. 347; am. 1993, ch. 327, § 9, p. 1186; am. 1994, ch. 180, § 29, p. 420; am. 1996, ch. 159, § 10, p. 502; am. 2003, ch. 32, § 10, p. 115.]

STATUTORY NOTES

Cross References. — State controller, § 67-1001 et seq.

Prior Laws. — Former § 22-3607, which comprised 1966 (2nd E.S.), ch. 17, § 7, p. 39, was repealed by S.L. 1988, ch. 192, § 1.

Compiler's Notes. — Section 41 of S.L. 1993, ch. 327 read: "All employees employed by the Joint Senate Finance-House Appropriations Committee, the Legislative Auditor or Legislative Budget Office on June 30, 1993, shall be transferred to the Legislative Council and shall be deemed to be employees of the Legislative Council on July 1, 1993. All moneys which have been appropriated to and been encumbered by the Joint Senate Finance-House Appropriations Committee, the Legislative Budget Office and the Legislative Auditor on June 30, 1993, shall be transferred to the Legislative Council and shall be deemed

to be encumbered by that body. All moneys appropriated to the Joint Senate Finance-House Appropriations Committee for the Legislative Auditor and the Legislative Budget Office are deemed appropriated to the Legislative Council for the same period and purpose."

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 29 of S.L. 1994, ch. 180 became effective January 2, 1995.

22-3608. Bonds. — The administrator, or any agent or employee appointed by the commission shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. The cost of the bond is an administrative expense under this act. [1966 (2nd E.S.), ch. 17, § 8, p. 39; am. 1971, ch. 136, § 7, p. 522.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3603.

22-3609. State not liable. — The state of Idaho is not liable for the acts or omissions of the commission or any member thereof, or any officer, agent or employee thereof. [1966 (2nd E.S.), ch. 17, § 9, p. 39.]

22-3610. Assessments — Packed — For processing. — There is hereby levied upon all apples grown annually in this state, and all apples packed as Idaho apples, an assessment of five cents (5¢) on each forty (40) pounds not shipped to processing plants. There is also levied an assessment of two dollars and fifty cents (\$2.50) per ton on all apples shipped to processing plants for processing. This action shall not apply to any one (1) person, dealer or grower who sells less than one thousand (1,000) pounds of apples in any marketing year. All moneys collected hereunder shall be expended to effectuate the purposes and objects of this chapter. [1966 (2nd E.S.), ch. 17, § 10, p. 39; am. 1987, ch. 300, § 1, p. 638.]

22-3611. Assessment — Payment — Statement. — The assessment shall be paid by the grower and shall be due on or before the time when such apples are first handled in the primary channels of trade and shall be paid at such times as the commission may by rule or regulation prescribe, but not later than sixty (60) days from the date on which the apples were handled in the primary channels of trade.

The commission shall by rule or regulation prescribe the method whereby the grower remits the assessment, and for that purpose may require the grower to file with the commission his sworn statement containing the information concerning all apples grown, handled, packed, shipped or processed by him, and the amount of tax due. [1966 (2nd E.S.), ch. 17, § 11, p. 39.]

22-3612. Records. — Every dealer and grower shall keep a complete and accurate record of all apples handled, packed, shipped or processed by him. The record shall be in such form and contain such information as the commission by rule or regulation prescribes, and shall be preserved for a period of two (2) years, and be subject to inspection at any time upon demand of the commission or its agents. [1966 (2nd E.S.), ch. 17, § 12, p. 39]

22-3613. Assessment — Increase. — If it appears from an investigation that the revenue from the assessment levied hereunder is inadequate to accomplish the purposes of this chapter, the commission shall file with the director of the department of agriculture a report showing the necessity of the industry, extent and probable cost of the required research, market promotion and advertising, extent of public convenience, interest and necessity, and probable revenue from the assessment desired to be levied. It shall thereupon increase the assessment to a sum not to exceed ten cents (10¢) per forty (40) pounds shipped in bulk, container or any style of

package; but no increase shall be made prior to filing of said report and finding. Provided, however, that no increase in such assessment shall become effective unless the same shall first be referred by the commission on a referendum mail ballot of the apple growers of this state, and be approved by two-thirds (2/3) vote of the growers of fifty per cent (50%) or more of the acreage represented in the voting. [1966 (2nd E.S.), ch. 17, § 13, p. 39; am. 1987, ch. 300, § 2, p. 638.]

22-3614. Returns. — Each dealer and/or grower shall, at such times as the commission may by rule or regulation require, file with the commission a return under oath, on forms to be furnished by the commission, stating the quantity of apples grown, packed, handled, shipped or processed by him, during the period prescribed by the commission. The return shall contain such further information as the commission may require. [1966 (2nd E.S.), ch. 17, § 14, p. 39.]

22-3615. Inspections. — The commission may inspect the premises and records of any grower, carrier, handler, packer, dealer or processor for the purpose of enforcing this act and the collection of the assessment. [1966 (2nd E.S.), ch. 17, § 15, p. 39.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3603.

22-3616. Penalty for violation. — Any person who violates or aids in violation of any provision of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$300, or imprisonment not to exceed six (6) months, or both. [1966 (2nd E.S.), ch. 17, § 16, p. 39.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3603.

Section 18 of S.L. 1966 (2nd E.S.), ch. 17 provided that all laws in conflict with this act are repealed.

Section 17 of S.L. 1966 (2nd E.S.), ch. 17 provided as follows: "This act shall be liberally construed and if any part or portion thereof be declared invalid the validity of the

remainder of this act and/or applicability thereof to any person, circumstances or things shall not be affected thereby, and it is the intention of the legislature to preserve any and all parts of this act if possible."

Effective Dates. — Section 19 of S.L. 1966 (2nd E.S.), ch. 17 declared an emergency. Approved March 11, 1966.

CHAPTER 37

CHERRY COMMISSION

SECTION.

22-3701. Policy and purpose.

22-3702. Commission created.

22-3703. Definitions.

22-3704. Commission members — Nomination and appointment.

SECTION.

22-3705. Powers and duties.

22-3706. Research — Advertising — Investigation.

22-3707. Deposit and disbursement of funds.

22-3708. Bonds.

SECTION.

22-3709. State not liable.

22-3710. Assessment.

22-3711. Assessment — Payment — State-
ment.

22-3712. Records.

SECTION.

22-3713. Assessment — Increase.

22-3714. Returns.

22-3715. Inspections.

22-3716. Penalty for violation.

22-3701. Policy and purpose. — It is to the best interests of all the people of the state of Idaho that the abundant and natural resources of Idaho be protected, fully developed and uniformly distributed. It is in the public interest and within the exercise of the police power of the state to protect the public health; prevent fraudulent practices; provide the means for the development of markets; production research; and new product development and promotion of the cherry industry. Cherries as used in this act means sweet cherries. [1967, ch. 70, § 1, p. 157.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" §§ 22-3701 to 22-3706 and 22-3708 to 22-3716.
refer to S.L. 1967, ch. 70, which is compiled as

22-3702. Commission created. — There is hereby created in the department of self-governing agencies an Idaho cherry commission to be thus known and designated. The commission shall be composed of three (3) practical cherry growers and two (2) practical cherry dealers.

The three (3) grower members shall be citizens and residents of this state over the age of twenty-five (25) years, each of whom is and has been actively engaged in the growing and producing of cherries within the state of Idaho and a major portion of his income from cherries has been derived from growing cherries.

The two (2) dealer members shall be persons who, either individually or as executive officers of a corporation, firm, partnership, association or cooperative organization are and have been actively engaged as dealers of cherries within the state of Idaho, are citizens and residents of this state, are over the age of twenty-five (25) years and a major portion of their income from cherries has been derived from handling, packing, shipping, buying or selling cherries or acting as sales or purchasing agent, broker, or factor of cherries.

The qualifications of members of the commission as herein set forth must continue during their term of office. The commission shall elect its chairman. Each member of the commission shall be compensated as provided by section 59-509(d), Idaho Code. [1967, ch. 70, § 2, p. 157; am. 1974, ch. 13, § 13, p. 138; am. 1980, ch. 247, § 18, p. 582.]

STATUTORY NOTES

Effective Dates. — Section 194 of S.L. 1974, ch. 13 provided that the act should take effect on and after July 1, 1974.

22-3703. Definitions. — Definitions as used in this act, unless the context requires otherwise:

(1) "Commission" means the Idaho cherry commission.

(2) "Grower" means any landowner personally engaged in growing cherries, a tenant personally engaged in growing cherries or both the owner and tenant jointly, and includes a person, partnership, association, corporation, cooperative organization, trust, sharecropper, or any and all other business units, devices and arrangements that grow cherries.

(3) "Dealer" means any person, partnership, association, corporation, cooperative or other business unit or device who first handles, packs, ships, buys or sells cherries or who acts as sales or purchasing agent, broker or factor of cherries.

(4) "Ship" means to load cherries into any mode of conveyance for transport in the channels of trade or to market.

(5) "Processor" and "processing plant" means every person, partnership, association, corporation, cooperative or other business unit or device to whom and every place to which cherries are delivered for drying, freezing, dehydrating, canning, pressing, powdering, extracting, cooking and for use in producing a product or manufacturing a manufactured product.

(6) "District No. 1" shall consist of the following counties: Gem, Boise, Valley, Custer and Lemhi.

(7) "District No. 2" shall consist of the following counties: Canyon, Ada, Owyhee, Elmore, Camas, Blaine, Gooding, Lincoln, Minidoka, Jerome, Twin Falls, Cassia, Power, Oneida, Bannock, Franklin, Bear Lake, Caribou, Bonneville, Madison, Teton, Jefferson, Fremont, Butte, Clark, Bingham, Payette, Washington, Adams, Idaho, Lewis, Nez Perce, Clearwater, Latah, Benewah, Shoshone, Kootenai, Bonner and Boundary.

(8) "Person" means any partnership, association, corporation, cooperative or other business unit or device. [1967, ch. 70, § 3, p. 157.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3701.

22-3704. Commission members — Nomination and appointment.

— Grower and dealer members of the commission shall be selected as follows:

(a) Two (2) grower members shall be nominated for each grower vacancy that occurs from which the governor shall appoint one (1). The first nominees shall be nominated in the following manner: The cherry committee [commission] of the Idaho Horticultural Society shall conduct meetings in each of the two (2) districts referred to in section 22-3703, Idaho Code, and at such meetings the growers shall nominate two (2) growers for each district and one (1) additional grower at large. The cherry committee [commission] of the Idaho Horticultural Society shall call a general meeting of the Idaho cherry dealers at such time and place as shall be decided by the committee for the purpose of nominating four (4) dealers, representative of the two (2) districts defined in subparagraphs (6) and (7) of section 22-3703,

Idaho Code. Notice of the meetings for the nominations of growers shall be by publication in one (1) newspaper published in the major cherry producing county of the district in which said nominations are to be made, and the notice shall be published in two (2) issues of such newspapers, the first approximately thirty (30) days and the second approximately ten (10) days before said meeting. The notice shall state the purpose, time and place of said meeting. All meetings held for the selection of nominees shall be held prior to March 31 of the year the appointment or appointments are to be made.

(b) After the original appointments to the commission all subsequent appointments shall be conducted in the same manner, except that the meetings shall be called and conducted by the commission.

(c) The governor shall select from the nominees for each district and the nominees at large one (1) grower member and from the four (4) nominees for dealers, two (2) members at large, as required by this act.

(d) The governor shall appoint five (5) persons to the commission based upon the nominating petitions. Three (3) shall be growers and two (2) shall be dealers. The appointed dealers may be from either district.

The first members of the commission shall draw lots to determine their respective terms of office. Two (2) of the original members shall serve for one (1) year; two (2) of the original members shall serve for two (2) years; and one (1) of the original members shall serve for three (3) years. The term of office of members of the commission thereafter shall be three (3) years. Provided, however, that both dealer members of the commission's terms of office shall not expire during the same year.

Members of the commission may not serve more than two (2) consecutive terms. Upon serving two (2) consecutive terms and the lapse of one (1) full term, such member may again be nominated and appointed to the commission.

In the event there are vacancies in the commission through death, resignation or removal, it shall be the duty of the growers and dealers as provided in section 22-3704, Idaho Code [this section], to submit to the governor at least two (2) qualified names for each grower vacancy and two (2) qualified names for each dealer vacancy for the district in which the vacancy occurred. The governor shall make the appointment or appointments to fill the vacancy. [1967, ch. 70, § 4, p. 157; am. 1998, ch. 122, § 1, p. 454.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", and in the last paragraph were added by the compiler.
see Compiler's Notes, § 22-3701.

The bracketed insertions in subsection (a)

22-3705. Powers and duties. — The Idaho cherry commission shall have, but is not limited to, the following powers and duties:

(1) To elect a chairman and such other officers as it deems advisable.

(2) To appoint and employ, and at its pleasure discharge, all necessary agents, employees and professional and other personnel, including experts

in agriculture and the publicizing of the products thereof, and to prescribe their duties and fix their compensation.

(3) To establish offices and incur expenses and enter into contracts and to create such liabilities as may be reasonable for the proper administration and enforcement of this act.

(4) To find new markets for cherries and cherry products.

(5) To give, publicize and promulgate reliable information showing the value of cherries and cherry products for any purpose for which they are found useful and profitable.

(6) To make public and encourage the widespread national and international use of cherries and cherry products.

(7) To investigate and participate in studies of the problems peculiar to the growers of cherries in the state of Idaho.

(8) To take such action as to the commission seems necessary or advisable in order to promote the sale of cherries and to protect the cherry industry.

(9) To enter into such contracts as may be necessary or advisable.

(10) To make use of such advertising means and methods as the commission deems advisable and to enter into contracts and agreements for research and advertising within and without the state of Idaho.

(11) To cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state, or the United States, engaged in work or activity similar to the work and activities of the commission, and to enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of research, education, product protection, publicity and reciprocal enforcement of these objectives.

(12) To investigate and prosecute in the name of the state of Idaho violations of this act; to investigate and prosecute in the name of the state of Idaho any suit or action for the collection of assessments as hereinafter provided, or to protect brands, marks, packages, brand names or trademarks being promoted by the commission.

(13) To do any and all things that will promote the sale of cherries.

(14) To keep an accurate record of all its dealings, which shall be open to inspection by the state controller.

(15) To sue and be sued.

(16) To adopt and from time to time alter, rescind, modify and/or amend all proper and necessary rules, regulations and orders for the exercise of its powers and performance of its duties under this act. [1967, ch. 70, § 5, p. 157; am. 1994, ch. 180, § 30, p. 420.]

STATUTORY NOTES

Cross References. — State controller, § 67-1001 et seq.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3701.

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the

amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 30 of S.L. 1994, ch. 180 became effective January 2, 1995.

22-3706. Research — Advertising — Investigation. — The commission shall provide for and conduct a comprehensive and extensive research, advertising and educational campaign as continuous as the crop, sales and market condition reasonably require. It will investigate and ascertain the needs of growers, conditions of the market and extent to which the public convenience and necessity require research and advertising to be conducted. [1967, ch. 70, § 6, p. 157.]

22-3707. Deposit and disbursement of funds. — (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1990, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited biennially by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the director of legislative services and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code. [I.C. § 22-3707, as added by 1989, ch. 110, § 2, p. 252; am. 1993, ch. 327, § 10, p. 1186; am. 1994, ch. 180, § 31, p. 420; am. 1996, ch. 159, § 11, p. 502; am. 2003, ch. 32, § 11, p. 115.]

STATUTORY NOTES

Cross References. — State controller, § 67-1001 et seq.

Prior Laws. — Former § 22-3707, which comprised 1967, ch. 70, § 7, p. 157, was repealed by S.L. 1989, ch. 110, § 1.

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho

changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment

was adopted, the amendment to this section by § 31 of S.L. 1994, ch. 180 became effective January 2, 1995.

22-3708. Bonds. — The administrator or any agent or employee appointed by the commission shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. The cost of the bond is an administrative expense under this act. [1967, ch. 70, § 8, p. 157; am. 1971, ch. 136, § 6, p. 522.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3701.

22-3709. State not liable. — The state of Idaho is not liable for the acts or omissions of the commission or any member thereof, or any officer, agent or employee thereof. [1967, ch. 70, § 9, p. 157.]

22-3710. Assessment. — There is hereby levied upon all cherries grown annually in this state and all cherries packed as Idaho cherries an assessment of twenty dollars (\$20.00) a ton. Provided, however, this section shall not apply to cherries shipped to a processing plant for processing, nor shall it apply to any person, dealer or grower who sells less than one thousand (1000) pounds of cherries in any marketing year. Provided, however, the exemption for shipment or sales to a processing plant for processing may be eliminated by a referendum mail ballot vote conducted by the commission among the cherry growers of this state, and provided further, the vote is approved by a two-thirds (2/3) vote of the growers of fifty percent (50%) or more of the acreage represented in the voting. All moneys collected hereunder shall be expended to effectuate the purposes and object of this act. [1967, ch. 70, § 10, p. 157; am. 1998, ch. 122, § 2, p. 454.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3701.

22-3711. Assessment — Payment — Statement. — The assessments shall be paid by the grower and shall be due on or before the time when such cherries are first handled in the primary channels of trade and shall be paid at such times as the commission may by rule or regulation prescribe, but not later than sixty (60) days from the date on which the cherries were handled in the primary channels of trade.

The commission shall by rule or regulation prescribe the method whereby the grower remits the assessment, and for that purpose may require the grower to file with the commission his sworn statement containing the information concerning all cherries grown, handled, packed, shipped, or processed by him, and the amount of tax due. [1967, ch. 70, § 11, p. 157.]

22-3712. Records. — Every dealer and grower shall keep a complete and accurate record of all cherries handled, packed, shipped or processed by him. The record shall be in such form and contain such information as the commission by rule or regulation prescribes, and shall be preserved for a period of two (2) years and be subject to inspection at any time upon demand of the commission or its agents. [1967, ch. 70, § 12, p. 157.]

22-3713. Assessment — Increase. — If it appears from an investigation that the revenue from the assessment levied hereunder is inadequate to accomplish the purposes of this act, the commission shall file with the director of the department of agriculture a report showing the necessity of the industry, extent and probable costs of the required research, market promotion and advertising, extent of public convenience, interest and necessity, and probable revenue from the assessment desired to be levied. It shall thereupon increase the assessment to a sum not to exceed twenty-five dollars (\$25.00) a ton; but no increase in such assessment shall become effective unless the same shall first be referred by the commission on a referendum mail ballot to the cherry growers of this state, and be approved by two-thirds (2/3) vote of the growers of fifty percent (50%) or more of the acreage represented in the voting. [1967, ch. 70, § 13, p. 157; am. 1981, ch. 5, § 1, p. 12; am. 1998, ch. 122, § 3, p. 454.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", ch. 5 declared an emergency and provided that the act should take effect on June 1, see Compiler's Notes, § 22-3701.

Effective Dates. — Section 2 of S.L. 1981, 1981.

22-3714. Returns. — Each dealer and/or grower shall at such times as the commission may by rule or regulation require, file with the commission a return under oath, on forms to be furnished by the commission stating the quantity of cherries grown, packed, handled, shipped or processed by him, during the period prescribed by the commission. The return shall contain such further information as the commission may require. [1967, ch. 70, § 14, p. 157.]

22-3715. Inspections. — The commission may inspect the premises and records of any grower, carrier, handler, packer, dealer or processor for the purposes of enforcing this act and the collection of the assessment. [1967, ch. 70, § 15, p. 157.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3701.

22-3716. Penalty for violation. — Any person who violates or aids in violation of any provision of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$300 or imprisonment not to exceed six (6) months, or both. [1967, ch. 70, § 16, p. 157.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3701.

Section 17 of S.L. 1967, ch. 70 provided as follows: "This act shall be liberally construed and if any part or portion thereof be declared invalid, or the application thereof to any person, circumstance or thing is declared invalid, the validity of the remainder of this act and/or

the applicability thereof to any person, circumstances or things shall not be affected thereby, and it is the intention of the legislature to preserve any and all parts of this act if possible."

Effective Dates. — Section 18 of S.L. 1967, ch. 70 declared an emergency. Approved March 8, 1967.

CHAPTER 38

MINT INDUSTRY ACT

SECTION.

- 22-3801. Mint industry act.
- 22-3802. Legislative intent — Research and advertising.
- 22-3803. Definitions.
- 22-3804. Idaho mint commission — Election of members — Compensation and terms.
- 22-3805. Powers and duties — Administration and enforcement.
- 22-3806. Assessment imposed — Requirements — "Grower's acreage" — Additional assessment — Referendum.

SECTION.

- 22-3807. Payment.
- 22-3808. Filing — Requirements.
- 22-3809. Penalty for defaults.
- 22-3810. Inspection — License fees.
- 22-3811. Disposition of receipts and use of moneys collected.
- 22-3812. Election of commission members.
- 22-3813. License application — Fee — Bond — Revocation — Forfeiture.
- 22-3814. Penalty.
- 22-3815. Referendum for continuance of the Idaho mint commission.
- 22-3816. Termination of commission.

22-3801. Mint industry act. — This act shall be known as the Mint Industry Act. [1969, ch. 49, § 1, p. 126.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1969, ch. 49, compiled herein as §§ 22-3801-22-3816.

22-3802. Legislative intent — Research and advertising. — It is hereby declared, as a matter of legislative determination, that economic waste threatens the mint industry of the state of Idaho by the lack of facilities and funds for research to develop and improve control measures for diseases and pests which attack mint, to improve mint growing culture and to disseminate information to the growers, and by the lack of proper advertising and dissemination of information necessary for the development and promotion of mint and essential oils grown in the state of Idaho; and that it is in the interest of the people, welfare and general prosperity of the state of Idaho that this avoidable economic waste be eliminated by the growers having at their disposal all available information on the best and most advanced methods of culture, growing, harvesting and marketing of mint and essential oils. The purpose of this act is to promote the general welfare of our people by improving the culture and production of and expanding the market for mint and essential oils grown in the state of Idaho. [1969, ch. 49, § 2, p. 126.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3801.

22-3803. Definitions. — Wherever used or referred to in this act:

- (1) The term "commission" means the Idaho mint commission.
- (2) The term "person" means individual, partnership, corporation, association, growers or any other business unit.
- (3) The term "mint" means all the essential oils that are distilled from any variety of mint plant grown or extracted in the state of Idaho.
- (4) The term "grower" means the actual producer of mint and essential oils.
- (5) The term "handled in the primary channels of trade" means the time when any mint or essential oils are delivered under a sales contract or delivered for shipment or delivered for processing or consumption.
- (6) The term "dealer" means and includes any person engaged in the business of buying, receiving, handling or selling mint or essential oils for profit or remuneration. [1969, ch. 49, § 3, p. 126; am. 1996, ch. 91, § 1, p. 273.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3801.

22-3804. Idaho mint commission — Election of members — Compensation and terms. — There is hereby created and established within the department of agriculture an Idaho mint commission to be known and designated as such which shall be composed of six (6) practical growers, elected as provided in section 22-3812, Idaho Code. The six (6) elected commissioner members shall select one (1) industry representative to sit on the commission, with full voting privileges and benefits of the other commissioner members. Each member of the commission shall be a resident citizen of the state of Idaho for a period of four (4) years prior to his election or selection, shall have active experience and be now actually engaged in growing mint in Idaho and shall derive a substantial portion of his income from growing mint or be the directing or managing head of a corporation, firm, partnership or other business unit which derives a substantial portion of its income from growing mint. To continue holding office, each member must remain qualified. The governor may remove a member if he becomes disqualified during his term of office or for inability to carry out his duties. Upon the establishment of the commission, one (1) member shall serve for a term of one (1) year, two (2) members shall serve for a term of two (2) years, two (2) members shall serve for a term of three (3) years and thereafter all terms of office shall be for a term of three (3) years. The term of office of each member of the commission shall terminate on the third Monday of January of the year in which the term for which the member was elected ends, but each member of the commission shall serve until his respective successor is elected and has qualified. Before entering on the discharge of their duties as

members of the commission, each member shall take and subscribe to the oath of office prescribed by law. A majority of the members of the commission shall constitute a quorum for the transaction of all business and the carrying out of all duties of the commission. The commission shall annually elect a chairman from among its members. Members of the commission shall receive no salary except upon the unanimous vote of the commission; however, members, officers and employees of the commission shall receive their actual and necessary travel and other expenses incurred in the performance of their official duties. The commission shall adopt uniform and reasonable regulations governing the incurring and paying of such expenses. [1969, ch. 49, § 4, p. 126; am. 1974, ch. 18, § 91, p. 364; am. 1983, ch. 35, § 1, p. 85; am. 1996, ch. 91, § 2, p. 273.]

22-3805. Powers and duties — Administration and enforcement.

— The powers and duties of the commission shall include the following:

- (1) To administer and enforce this act.
- (2) To contract in the name of the commission and be contracted with.
- (3) To employ and at pleasure discharge a research director, research staff, a secretary, advertising manager, advertising agents, agents, attorneys and such clerical and other help as it deems necessary and to control their powers and duties and to fix their compensation.
- (4) To keep books, records and accounts of all its dealings, which books, records and accounts of all its dealings shall be open to inspection by the state controller at all times.
- (5) To purchase or authorize the purchase of all office equipment or supplies and incur all other reasonable and necessary expenses and obligations in connection with and required for the proper carrying out of the provisions of this act.
- (6) To become a member of and purchase membership in trade organizations and to subscribe to and purchase trade bulletins, journals, and other trade publications.
- (7) To plan and conduct a research program to improve the quality of mint, to develop and improve control measures for disease and pests which attack mint and to improve mint growing culture and to disseminate such information among the growers and to make such research contracts and other agreements as may be necessary.
- (8) To plan and conduct an advertising, publicity and sales promotion campaign to increase the sale and use of mint and to make such advertising, publicity and sales promotion contracts and other agreements as may be necessary.
- (9) To prohibit the distillation of any mint not actually grown in the state of Idaho.
- (10) To establish and maintain the executive offices of the commission at any place within the state of Idaho which designated place may be changed at the discretion of the commission.
- (11) To adopt and from time to time alter, rescind, modify or amend all proper and necessary rules and orders for the exercise of its power and the performance of its duties under this act.

(12) To cooperate with the director of the department of agriculture in and to pay all or any portion of the costs incurred in the creation, administration and enforcement of any quarantine and inspection affecting mint and mint rootstock established pursuant to the laws of the state of Idaho.

(13) To plan and conduct a research program for improving old varieties and developing new varieties of mint; to propagate any such improved old varieties or such new varieties of mint; to patent any such improved old varieties or such new varieties of mint and to license the propagation, growing and sale thereof; to adopt such trade names or trademarks in relation to any such improved old varieties or such new varieties of mint and to patent, copyright, or otherwise protect such names; buy, contract to buy, receive by gift or otherwise acquire, hold, or retain legal title to such improved old varieties or such new varieties of mint including the rootstock thereof and the mint produced therefrom; to sell, lease, consign, trade, exchange, or give away or otherwise dispose of any such improved old varieties or such new varieties of mint, including the rootstock thereof and the mint produced therefrom; to advertise and promote the commercial use of such improved old varieties and new varieties of mint; and to impose, by contract or regulation or otherwise, such conditions and restrictions as may be determined by the commission pertaining to such improved old varieties and such new varieties of mint including the rootstock thereof, including but not limited to conditions and restrictions limiting, restricting, prohibiting or affecting the use, distribution, acreage, production, geographical areas of planting, cultural practices used in propagation, leasing, assigning, selling, sale price, and the use of trade names and trademarks relating to such improved old varieties or such new varieties of mint including the rootstock thereof and the increase thereof and the use of trade names and trademarks to designate mint produced from any such improved old varieties or such new varieties of mint including the rootstock thereof and the mint produced therefrom; to sell, lease, consign, trade, exchange, or give away or otherwise dispose of any such improved old varieties or such new varieties of mint, including the rootstock thereof and the mint produced therefrom; to advertise and promote the commercial use of such improved old varieties and new varieties of mint; and to impose, by contract or regulation or otherwise, such conditions and restrictions as may be determined by the commission pertaining to such improved old varieties and such new varieties of mint including the rootstock thereof, including but not limited to conditions and restrictions limiting, restricting, prohibiting or affecting the use, distribution, acreage, production, geographical areas of planting, cultural practices used in propagation, leasing, assigning, selling, sale price, and the use of trade names and trademarks relating to such improved old varieties or such new varieties of mint including the rootstock thereof and the increase thereof and the use of trade names and trademarks to designate mint produced from any such improved old varieties or such new varieties of mint. Nothing in this section is intended to interfere with, restrict or in any way discourage the development of improved old varieties or new varieties by dealers, growers or other private parties and such powers and duties as

are conferred upon the commission hereby are restricted to such improvement of old varieties or development of new varieties which are improved or developed by the commission and such improved old varieties as are developed by dealers, growers or other private parties are not subject to the provisions of this section.

(14) To prosecute in the name of the state of Idaho any suit or action for collection of the assessment provided for in this chapter. [1969, ch. 49, § 5, p. 126; am. 1974, ch. 18, § 92, p. 364; am. 1994, ch. 180, § 32, p. 420.]

STATUTORY NOTES

Cross References. — State controller, § 67-1001 et seq.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3801.

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the

amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 32 of S.L. 1994, ch. 180 became effective January 2, 1995.

22-3806. Assessment imposed — Requirements — "Grower's acreage" — Additional assessment — Referendum. — (1) The commission is hereby empowered to levy an assessment not to exceed eight cents (8¢) per pound on each pound of essential oil handled in the primary channels of trade.

(2) This assessment may be increased to not exceed a total assessment of ten cents (10¢) per pound as determined by a two-thirds (2/3) affirmative vote of the growers voting or a majority of the acreage voting in a referendum to be conducted by mail by the commission. The amount of any increased assessment, if any, shall be determined by resolution of the commission after February 1st or before July 1st of each year. The term "acreage" for the purposes of this subsection, means the number of acres of mint produced by a grower during the calendar year immediately next preceding each annual registration of growers as herein provided. Each grower, whether an individual, a partnership, a corporation, an association or other business unit, shall have one (1) vote at such referendum. No grower shall vote at any such referendum during any year unless such grower has, after January 1st but prior to January 15th of such year, registered with the commission on forms to be supplied by the commission giving such grower's name, mailing address and acreage, except that for the calendar year in which this subsection takes effect, the periods for the registration of growers shall be the fifteen (15) days immediately succeeding the effective date of this subsection [February 24, 1969]. The qualification of any grower to vote or the amount of such grower's acreage as shown by such grower's registration may be challenged by any other grower qualified to vote or any member of the commission. All such challenges shall be presented to the commission in writing within ten (10) days after the close of registration and shall be heard and determined by the commission prior to canvassing the returns of any such referendum. After the adoption of a resolution by the commission fixing the amount of the additional assessment to be submitted to a referendum of the growers, the commission shall

cause to be mailed by United States registered mail to each grower so registered, at the address appearing on such grower's registration, a ballot setting forth the name of such grower, the grower's acreage, a copy of the resolution so adopted, and the words, "For additional assessment as provided in the foregoing resolution," followed by a circle and the words "Against the additional assessment as provided in the foregoing resolution," followed by a circle and such ballot shall provide a space at the bottom thereof for the grower's signature. A grower desiring to vote upon the amount of the additional assessment shall mark the ballot received to express the grower's vote, shall sign the ballot and shall return the ballot to the commission within twenty (20) days after the date on which the ballot was mailed to the grower by the commission. Any ballot which is not returned within such time limit, or which is not voted, or which is not signed, or which is marked both for and against the question submitted, shall be deemed not to have been voted and shall not be counted for any purpose. The commission shall meet and canvass all ballots cast at any such referendum within ten (10) days after the date by which all ballots are herein required to be returned to the commission. Upon the canvass, if the commission finds that two-thirds ($\frac{2}{3}$) or more of the growers voting at such referendum have voted in favor of the amount of such additional assessment or that growers representing a majority or more of the production of all growers voting at such referendum have voted in favor of the amount of such additional assessment, then the amount of such additional assessment shall have been approved, but if the commission finds otherwise, then the amount of such additional assessment shall have failed. The commission shall record the results of each canvass in its official records and shall retain all election records, grower registrations and the ballots for one (1) year after the date of such canvass when it may cause the same to be destroyed. If the canvass shows that the amount of such additional assessment shall have been approved, the commission shall immediately adopt a resolution levying the amount thereof. Such additional assessment when so levied shall apply only to the pounds of mint grown during the calendar year in which the referendum approving the same was held, but shall so apply regardless of the calendar year in which such essential oils are first handled in the primary channels of trade. If the canvass shows that the amount of such additional assessment shall have failed, the commission shall not levy the amount thereof, but the commission may resubmit the same or another amount for such additional assessment to the growers by referendum as herein provided as often as the commission deems necessary.

(3) All assessments levied under this act shall be due on or before the time when such essential oils are first handled in the primary channels of trade and shall be paid not later than the last day of the month next succeeding the month in which such essential oils were first handled in the primary channels of trade.

(4) The assessment constitutes a lien prior to all other liens and encumbrances upon such essential oils except liens which are declared prior by operation of a statute of this state, but payment of the assessment by either grower or dealer who first handled such essential oils shall not subject such

grower or dealer to liability for a lien prior to the lien herein imposed unless actual notice of such prior lien has been made upon such grower or dealer.

(5) The commission by order may cancel an assessment which has been delinquent for five (5) years or more if it determines that: (a) the amount of the assessment is less than one dollar (\$1.00), and that further collection effort or expense does not justify the collection thereof, or the assessment is wholly uncollectible. [1969, ch. 49, § 6, p. 126; am. 1971, ch. 8, § 1, p. 18; am. 1987, ch. 285, § 1, p. 605; am. 1992, ch. 64, § 1, p. 196.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3801.

The bracketed insertion in subsection (a) was added by the compiler.

Effective Dates. — Section 2 of S.L. 1971, ch. 8 declared an emergency. Approved February 3, 1971.

22-3807. Payment. — All assessment [assessments] levied and imposed under and pursuant to the provision [provisions] of this chapter shall be paid to the commission by the person, either grower or dealer, by whom the essential oils are first handled in the primary channels of trade. [1969, ch. 49, § 7, p. 126.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions were added by the compiler.

22-3808. Filing — Requirements. — Every grower and dealer shall at such times as the commission may by rule prescribe, file with the commission a return under oath on forms to be prescribed by and furnished by the commission, stating the number of pounds of essential oils handled in the primary channels of trade during the period or periods of time prescribed by the commission and such other information as the commission may require. [1969, ch. 49, § 8, p. 126; am. 1996, ch. 91, § 3, p. 273.]

22-3809. Penalty for defaults. — Any grower or dealer who fails to make collection or to file a return or to pay any assessment within the time required pursuant to this act shall thereby forfeit to the commission a penalty of five percent (5%) of the amount of the assessment determined to be due, as provided in this act, plus one percent (1%) of such amount for each month of delay or fraction thereof after the expiration of the first month after such return was required to be filed or such assessment became due. The commission, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid to the commission and disposed of as provided with respect to moneys derived from the assessments levied and imposed by this act. [1969, ch. 49, § 9, p. 126.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-3801.

22-3810. Inspection — License fees. — The commission shall have the power by its duly authorized agent or representative to enter upon the premises of any grower or dealer to examine any books, papers, records or memorandum [memoranda] bearing on the amount of assessments or license fees payable and to secure other information directly or indirectly concerned in the enforcement of this act. No person who is required to pay the assessments of license fees levied and imposed by this act shall by any practice or evasion make it difficult to enforce the provisions of this act by inspection, nor shall such person after demand by the commission or any agent or representative designated by it for that purpose, refuse to allow full inspection of the premises or any part thereof or any books, records, documents or other instruments in any way relative to the liability of such person for the assessment or license fee herein imposed nor shall such person hinder or in any manner delay or prevent such inspection. [1969, ch. 49, § 10, p. 126.]

STATUTORY NOTES

Compiler's Notes. — The bracketed word "memoranda" was inserted by the compiler.

For words "this act", see Compiler's Notes, § 22-3801.

22-3811. Disposition of receipts and use of moneys collected. —

(1) As soon as possible after receipt, all moneys received by the commission from the assessment levied under section 22-3806, Idaho Code, and all other moneys received by the commission shall be deposited in one (1) or more separate accounts in the name of the commission in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such accounts at such banks or trust companies.

(2)(a) No moneys shall be withdrawn from or paid out of such accounts except upon order of the commission, and upon checks or other orders upon such accounts signed by such member of the commission as the commission designates. The commission shall establish and maintain an adequate and reasonable system of internal accounting controls. The internal accounting controls shall be written, approved and periodically reviewed by the commission. A receipt, voucher or other written record, showing clearly the nature and items covered by each check or other order, shall be kept.

(b) All moneys referred to in subsection (1) of this section shall be used by the commission only for the payment of expenses of the commission in carrying out the powers conferred on the commission.

(c) The commission may require any commission member or agent or employee appointed by the commission, to give a bond payable to the commission in the amount, and with the security and containing the terms and conditions the commission prescribes. The cost of such bond is an administrative cost under this chapter.

(3) The right is reserved to the state of Idaho to audit all funds of the commission at any time. [1969, ch. 49, § 11, p. 126; am. 2006, ch. 362, § 1, p. 1100.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 362, in subsection (2)(a), substituted the present second and third sentences for “and countersigned by such other member, officer or employee of the commission as the commission designates.”

22-3812. Election of commission members. — (1) The members of the commission shall be elected by secret mail ballot under the supervision of the director of the department of agriculture. Members of the commission shall be elected by a majority of the votes cast by the grower members, each grower being entitled to one (1) vote. If a nominee does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two (2) candidates for such position receiving the largest number of votes. The cost of the election shall be paid by the commission although it is supervised by the department of agriculture.

(2) Any office which becomes vacant before expiration of the member's term shall be filled by election in the manner provided for regular elections, except that such office may remain vacant until the next regular election if the vacancy is for less than one (1) year. [1969, ch. 49, § 12, p. 126; am. 1974, ch. 18, § 93, p. 364.]

STATUTORY NOTES

Effective Dates. — Section 263 of S.L. 1974, ch. 18 provided the act should take effect on and after July 1, 1974.

22-3813. License application — Fee — Bond — Revocation — Forfeiture. — No person shall act as dealer in the essential oils without having obtained a license as provided in this act. Every person acting as a dealer shall file a written application with the commission for a license as such which application shall state the applicant's name, principal business addresses within and without the state of Idaho, the name of the person authorized to receive and accept service of summons and legal notices of all kinds for the applicant within the state of Idaho and such other information as the commission may require. Each application shall be accompanied with a license fee of two hundred dollars (\$200) and by good and sufficient surety bond in the penal sum of two thousand dollars (\$2,000) executed by the applicant (and) as principal and by a surety company authorized to do business in the state of Idaho as surety and conditioned upon the applicant's full and complete compliance with the provisions of this act and all of the rules and orders of the commission. The commission shall investigate each applicant thoroughly and if the commission is satisfied that the applicant is of good character and reputation and is financially responsible, a license shall be issued for the period ending on the next succeeding first Monday of January, otherwise the application shall be denied. The commission may revoke a license after thirty (30) days' written notice of its intention so to do, and after providing the licensee with an opportunity for an appropriate contested case in accordance with the provisions of chapter 52, title 67, Idaho Code, if the licensee shall willfully fail to fully and completely comply

with the provisions of this act and all of the rules and orders of the commission. Upon the revocation of such licenses the full amount of the bond shall be forfeited and damages in that sum shall be conclusively presumed to have been incurred by the commission. All license fees and all bond forfeitures shall be deposited as provided in section 22-3811, Idaho Code. Any person aggrieved by the final action of the commission is entitled to judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code. [1969, ch. 49, § 13, p. 126; am. 1993, ch. 216, § 5, p. 587; am. 1996, ch. 91, § 4, p. 273.]

STATUTORY NOTES

Compiler's Notes. — For words “this act”, sentence were added by the compiler to indicate that the word is surplusage.
The parentheses around “and” in the third

22-3814. Penalty. — Every person who shall violate or aid in the violation of any of the provisions of this act or any of the rules or orders of the commission adopted pursuant to the authority conferred by this act, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment, not exceeding ninety (90) days, or by both such fine and imprisonment and all fines collected for violation of this act shall be deposited as provided in section 22-3811, Idaho Code. [1969, ch. 49, § 14, p. 126; am. 1996, ch. 91, § 5, p. 273.]

STATUTORY NOTES

Compiler's Notes. — For words “this act”,
see Compiler's Notes, § 22-3801.

22-3815. Referendum for continuance of the Idaho mint commission. — After five (5) years from the date the commission was created, a referendum may be held at the petition of the growers or at the request of the commission. The question shall be submitted by secret mail ballots upon which the words “for continuance of the Idaho Mint Commission” and “against continuance of the Idaho Mint Commission” are printed, with a square before each proposition and a direction to insert an “X” mark in the square before the proposition which the voter favors. In the event a referendum is held as provided in this section, no further referendum on the question of discontinuance of such commission shall be held within five (5) years from the date the results of the previous referendum was declared.

The referendum must be held and supervised by the department of agriculture upon its receiving either of the following:

1. A petition signed by thirty percent (30%) of the growers, or two hundred (200) growers, whichever is less. The petitioners shall pay the cost of such referendum if the commission continues but the commission must bear the cost if the majority vote is in favor of discontinuance.

2. A written request from the commission. The commission shall pay the cost of such referendum.

The referendum shall be held, notice thereof given, expenses thereof paid and the result determined, declared and recorded in the office of the secretary of state. No hearing or district meetings of the grower members shall be set prior to the referendum upon the question of determining whether such referendum should be held.

Notice of such referendum must be given by the commission in a manner determined by them. The ballots must also be prepared by the commission and forwarded to the grower members, who shall return them within twenty (20) days after mailing by the commission. [1969, ch. 49, § 15, p. 126; am. 1996, ch. 91, § 6, p. 273.]

22-3816. Termination of commission. — If the vote at the referendum provided in section 22-3815[, Idaho Code,] is in favor of discontinuance, the commission shall as rapidly as possible terminate its activities, convert its assets to cash and do all other things necessary to terminate its activities. At the termination of such activities, any funds remaining in possession of the commission shall be paid to the University of Idaho for research regarding mint. [1969, ch. 49, § 16, p. 126.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler.

Section 17 of S.L. 1969, ch. 49 read: "This act shall be liberally construed, and if any part or portion thereof be declared invalid, or the application thereof to any person, circumstance or thing is declared invalid, the validity of the remainder of this act and/or the

applicability thereof to any person, circumstance or thing shall not be affected thereby, and it is the intention of the legislature to preserve any and all parts of this act if possible."

Effective Dates. — Section 18 of S.L. 1969, ch. 49 declared an emergency. Approved February 24, 1969.

CHAPTER 39

DEDUCTION OF DUES TO GROWER OR PRODUCER ORGANIZATIONS

SECTION.

22-3901. Deduction of dues to grower organizations by handlers and processors.

22-3902. Assignment cannot be invalidated by private contract.

SECTION.

22-3903. Limiting amount of deductions and payments of assigned dues.

22-3904. Payment requirement.

22-3905. Lienholder's rights.

22-3906. Administrative expenses.

22-3901. Deduction of dues to grower organizations by handlers and processors. — If any grower or producer of any farm product within this state voluntarily executes and causes to be delivered to a dealer or processor of farm products, either as a clause in a sales contract or other instrument in writing, a notice of assignment of dues to a nonprofit agricultural commodity organization directly representing the specific product involved, by which the processor or dealer is directed to deduct a sum from the price to be paid for such product and to pay the same over to such association as dues for the grower or producer, the processor or dealer shall deduct from the price to be paid for any farm product being sold by any such grower or producer to any such processor or dealer, the amount authorized and pay it over to the organization as assignee. [1969, ch. 321, § 1, p. 745.]

22-3902. Assignment cannot be invalidated by private contract.

— No provision which is inserted in any contract that is prepared by a dealer or processor which makes an assignment of the dues described in section 22-3901[, Idaho Code,] ineffective is valid. [1969, ch. 321, § 2, p. 745.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler.

22-3903. Limiting amount of deductions and payments of assigned dues. — An assignment of dues may not exceed 2 per cent (2%) of the total value of the product which is delivered by the grower or producer to the dealer or processor. [1969, ch. 321, § 3, p. 745.]

22-3904. Payment requirement. — Payment need not be made under any assignment of dues pursuant to section 22-3901[, Idaho Code,] until the dealer or processor has available and under his control funds owing to the grower or producer that are sufficient in amount for making the payment of the dues involved. In the case of an annual product, such payment need not be made until the end of the product year. [1969, ch. 321, § 4, p. 745.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler.

22-3905. Lienholder's rights. — Any dealer or processor who pays any dues to an association pursuant to the assignment of dues governed by this act shall not be liable for such sums upon any seed lien, farm laborer's lien or any other lien or encumbrance which has priority by law upon the proceeds of the farm crop or product. Any lienholder who has priority upon the proceeds from such farm crop or product whose lien remains unsatisfied shall have the right to receive all sums paid to any association pursuant to the assignment of dues. Such association shall remit all dues paid pursuant to the assignment to the priority lienholder upon the receipt of notice and proof that a valid prior lien exists against such farm crop or product. [1969, ch. 321, § 5, p. 745.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1969, ch. 321, compiled as §§ 22-3901 to 22-3906.

22-3906. Administrative expenses. — Any dealer or processor may deduct a sum not to exceed two percent (2%) of the total dues to be paid to an association for administrative expenses incurred by the payment of such dues under the assignment. [1969, ch. 321, § 6, p. 745.]

CHAPTER 40

BARLEY — PROMOTION OF MARKETING

SECTION.

- 22-4001. Declaration of policy.
- 22-4002. Barley commission created — Members.
- 22-4003. Definitions.
- 22-4004. Qualification of members.
- 22-4005. Term of members.
- 22-4006. Compensation of members.
- 22-4007. Chairman and administrator of commission.
- 22-4008. Meetings of commission.
- 22-4009. Duties and powers of commission.
- 22-4010. Deposit and disbursement of funds.
- 22-4011. Bonds of agents and employees.

SECTION.

- 22-4012. Appointment of administrator — Duties — Salary.
- 22-4013. Establishment of administrator's office.
- 22-4014. State not liable for acts or omissions of commission or of its employees.
- 22-4015. Imposition of tax.
- 22-4016. Delivery of documents to sellers.
- 22-4017. Payment of tax — Disposition of receipts.
- 22-4018. Penalties.
- 22-4019. Referendum for barley growers.

22-4001. Declaration of policy. — It is to the interest of all the people that the abundant natural resources of Idaho be protected, fully developed and uniformly distributed. Among the agricultural industries of the state of Idaho that contribute to the economic welfare of the state is the barley industry. Because of a surplus of barley grown in this state, and because a surplus during recurrent years has become excessive and difficult to market in the available markets, it is necessary, in order to provide a profitable enterprise for the barley growers of the state and to promote employment of labor and to assist the barley growers and those in the various industries dependent upon the barley growers, that additional markets be found and developed. It is the purpose of this chapter to promote the public health and welfare of the citizens of our state by providing means for the protection, promotion, study, research, analysis and development of markets concerning the growing and marketing of Idaho barley. [I.C., § 22-4001, as added by 1988, ch. 194, § 1, p. 351.]

STATUTORY NOTES

Prior Laws. — Former sections 22-4001 — p. 364, were repealed by S.L. 1978, ch. 98, 22-4012, which comprised S.L. 1971, ch. 257, § 1. §§ 1-12, p. 1031; am. 1974, ch. 18, §§ 94-96,

22-4002. Barley commission created — Members. — There is hereby created and established in the department of self-governing agencies the Idaho barley commission to be composed of three (3) grower members appointed by the governor, one (1) from each of the three (3) commission districts referred to in section 22-4004, Idaho Code, who shall be appointed by the governor from a list of names with at least three (3) names for each appointive office for each district submitted to the governor by the Idaho grain producers association, inc., a grain growers' association representing barley growers throughout the state of Idaho, and each shall hold office for the term specified in section 22-4005, Idaho Code. The commissioners appointed by the governor may select a barley industry representative to serve a three (3) year term on the commission. The dean of the college of agriculture, university of Idaho, or his duly authorized representative, shall

be an ex officio member of the commission without vote. [I.C., § 22-4002, as added by 1988, ch. 194, § 1, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 22-4002 was repealed. See Prior Laws, § 22-4001. ducers association, inc., see <http://www.idahograin.org>.

Compiler's Notes. — For Idaho grain pro-

22-4003. Definitions. — As used in this chapter:

(1) "Commercial channels" means the sale of barley for use as food, feed, seed, or any industrial or chemurgic use, when sold to any commercial buyer, user, dealer, processor, cooperative, or to any person, public or private, who resells any barley or product produced from barley.

(2) "Commission" means the Idaho barley commission.

(3) "Crop reduction program" means an offer by an agency of the United States government to give growers an amount of barley as payment for reducing planted acreage of barley.

(4) "Delivery" means placing of barley into the primary channels of trade.

(5) "First purchaser" means any person, group, association or partnership that buys barley in this state in the first instance, or any lienholder, public or private, including the commodity credit corporation, who may possess barley from the grower under any lien.

(6) "Grower" means any landowner personally engaged in growing barley, a tenant of the landowner personally engaged in growing barley, or both the owner and the tenant jointly, and includes a person, partnership, association, corporation, cooperative, trust, sharecropper or any and all other business units, devices and arrangements.

(7) "Sale" includes any pledge, mortgage or delivery of barley for sale after harvest to any person, public or private.

(8) "Seller" means any person or entity, including growers, who sells barley in the first instance. [I.C., § 22-4003, as added by 1988, ch. 194, § 1, p. 351; am. 1997, ch. 157, § 1, p. 453.]

STATUTORY NOTES

Prior Laws. — Former § 22-4003 was repealed. See Prior Laws, § 22-4001.

Compiler's Notes. — The commodity credit corporation (CCC) is a government-owned and operated entity that was created to stabilize, support, and protect farm income and prices. CCC also helps maintain balanced and adequate supplies of agricultural commodities and aids in their orderly distribution.

CCC was incorporated October 17, 1933,

under a Delaware charter. It was initially managed and operated in close affiliation with the reconstruction finance corporation, which funded its operations.

On July 1, 1939, CCC was transferred to the United States Department of Agriculture (USDA). It was reincorporated on July 1, 1948, as a federal corporation within USDA by the commodity credit corporation charter act (62 Stat. 1070; 15 U.S.C. 714), as amended through P.L. 110-246, effective May 22, 2008.

22-4004. Qualification of members. — Members of the commission shall be selected and appointed because of their ability and disposition to serve the state's interest and for knowledge of the state's natural resources. Members appointed by the governor shall be citizens over twenty-five (25)

years of age, residents of the state who have been actually engaged in growing barley in this state for at least five (5) years, and who derive a substantial portion of their income from growing barley in the state of Idaho. There shall be one (1) member from each of the following three (3) districts initially established as follows:

District 1. Boundary, Bonner, Kootenai, Shoshone, Benewah, Latah, Clearwater, Nez Perce, Lewis, Idaho, Adams, Valley and Washington Counties.

District 2. Payette, Gem, Boise, Custer, Canyon, Ada, Elmore, Camas, Blaine, Butte, Gooding, Lincoln, Jerome, Minidoka, Owyhee, Twin Falls and Cassia Counties.

District 3. Lemhi, Clark, Fremont, Jefferson, Madison, Teton, Bingham, Bonneville, Power, Bannock, Caribou, Oneida, Franklin and Bear Lake Counties. [I.C., § 22-4004, as added by 1988, ch. 194, § 1, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 22-4004 was repealed. See Prior Laws, § 22-4001.

22-4005. Term of members. — (1) Except as provided in subsection (3), the term of office of a member of the barley commission shall be three (3) years. Any member of the commission who has served for two (2) full consecutive terms shall not be eligible for reappointment until the expiration of a three (3) year period.

(2) Appointments to fill vacancies shall be for the balance of the unexpired term.

(3)(a) Beginning July 1, 1988, a member from district 1 will be appointed for a full four (4) year term ending in 1992. Subsequent terms will be for three (3) years.

(b) Beginning July 1, 1988, a member from district 2 will be appointed for a full three (3) year term ending in 1991. Subsequent terms will be for three (3) years.

(c) Beginning July 1, 1988, a member from district 3 will be appointed for a full two (2) year term ending in 1990. Subsequent terms will be for three (3) years. [I.C., § 22-4005, as added by 1988, ch. 194, § 1, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 22-4005 was repealed. See Prior Laws, § 22-4001.

22-4006. Compensation of members. — Members of the commission shall be compensated as provided in section 59-509(h), Idaho Code. [I.C., § 22-4006, as added by 1988, ch. 194, § 1, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 22-4006 was repealed. See Prior Laws, § 22-4001.

22-4007. Chairman and administrator of commission. — The commission shall elect one of the governor's appointed members as chairman and may employ an administrator who is not a member of the commission, or may contract with the Idaho wheat commission or a similar agency for the administration of the barley commission's business. [I.C., § 22-4007, as added by 1988, ch. 194, § 1, p. 351.]

STATUTORY NOTES

Cross References. — Idaho wheat commission, § 22-3202.

Prior Laws. — Former § 22-4007 was repealed. See Prior Laws, § 22-4001.

22-4008. Meetings of commission. — The commission shall meet at least once every three (3) months regularly and at such other times as called by the chairman. The chairman may call special meetings of the commission at any time or place. [I.C., § 22-4008, as added by 1988, ch. 194, § 1, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 22-4008 was repealed. See Prior Laws, § 22-4001.

22-4009. Duties and powers of commission. — (1) Consistent with the general purposes of this chapter, the commission shall establish the policies to be followed in the accomplishments of such purposes.

(2) In the administration of the provisions of this chapter, the commission shall, in conjunction with the Idaho grain producers association, inc., have the following duties, authorities and powers:

- (a) To conduct a campaign of research, education and publicity.
- (b) To find new markets for barley and barley products.
- (c) To give, publicize and promulgate reliable information showing the value of barley and barley products for any purpose for which it is found useful and profitable.
- (d) To make public and encourage the widespread national and international use of the special kinds of barley and barley products produced from all varieties of barley grown in Idaho.
- (e) To investigate and participate in studies of the problems peculiar to the producers of barley in Idaho.
- (3) The commission shall have the duty, power and authority:
 - (a) To take such action as the commission deems necessary or advisable in order to stabilize and protect the barley industry of the state and the health and welfare of the public.
 - (b) To sue and be sued.
 - (c) To enter into such contracts as may be necessary or advisable.
 - (d) To appoint and employ officers, agents and other personnel, including experts in agriculture and the publicizing of the products thereof, and to prescribe their duties and fix their compensation.
 - (e) To make use of such advertising means and methods as the commission deems advisable and to enter into contracts and agreements for research and advertising within and without the state.

(f) To cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state or by national law, engaged in work or activities similar to the work and activities of the commission, and to enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of research, education and publicity and reciprocal enforcement.

(g) To lease, purchase or own the real or personal property deemed necessary in the administration of the provisions of this chapter.

(h) To prosecute in the name of the state of Idaho any suit or action for collection of the tax or assessment provided for in the provisions of this chapter.

(i) To adopt, rescind, modify and amend all necessary and proper orders, resolutions and rules for the procedure and exercise of its powers and the performance of its duties.

(j) To incur indebtedness and carry on all business activities.

(k) To keep books and records and accounts of all its doings, which books, records and accounts shall be open to inspection by the state controller and public at all times.

(l) To audit records of "first purchasers" of Idaho barley and otherwise to determine the time of proper collection amount or payment of the barley tax or any penalties thereto. [I.C., § 22-4009, as added by 1988, ch. 194, § 1, p. 351; am. 1994, ch. 180, § 33, p. 420; am. 1997, ch. 157, § 2, p. 453.]

STATUTORY NOTES

Cross References. — State controller, § 67-1001 et seq.

Prior Laws. — Former § 22-4009 was repealed. See Prior Laws, § 22-4001.

Compiler's Notes. — For Idaho grain producers association, inc., see <http://www.idahograin.org>.

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday

in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 33 of S.L. 1994, ch. 180 became effective January 2, 1995.

22-4010. Deposit and disbursement of funds. — (1) Immediately upon receipt, all grants, donations and gifts of funds from any source for expenditure for any purpose consistent with this chapter which may be specified as a condition of any grant, donation or gift, and all of the revenues received under the provisions of section 22-4017, Idaho Code, shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative services office, the state controller, and the division of financial management, a report showing the annual income to the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current fiscal year and a projection of anticipated expenses by category for the current fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited every second year, but shall address every year distinctly, by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the director of legislative services and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code. [I.C., § 22-4010, as added by 1988, ch. 194, § 1, p. 351; am. 1993, ch. 327, § 11, p. 1186; am. 1994, ch. 180, § 34, p. 420; am. 1996, ch. 159, § 12, p. 502; am. 1997, ch. 157, § 3, p. 453; am. 2003, ch. 32, § 12, p. 115.]

STATUTORY NOTES

Cross References. — State controller, § 67-1001 et seq.

Prior Laws. — Former § 22-4010 was repealed. See Prior Laws, § 22-4001.

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the

amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 34 of S.L. 1994, ch. 180 became effective January 2, 1995.

22-4011. Bonds of agents and employees. — The administrator, or any agent or employee appointed by the commission shall be bonded to the state of Idaho in the time, form and manner as prescribed by chapter 8, title 59, Idaho Code. The cost of the bond is an administrative expense under this chapter. [I.C., § 22-4011, as added by 1988, ch. 194, § 1, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 22-4011 was repealed. See Prior Laws, § 22-4001.

22-4012. Appointment of administrator — Duties — Salary. — The commission may appoint an administrator who shall devote full time to the administration of the provisions of this chapter. He shall proceed immediately to prepare the plans and general program necessary and adequate to carry out the policies that are adopted by the commission. The administrator shall be paid a reasonable salary fixed by the commission, commensurate

with his duties, and all necessary expenses. [I.C., § 22-4012, as added by 1988, ch. 194, § 1, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 22-4012 was repealed. See Prior Laws, § 22-4001.

22-4013. Establishment of administrator's office. — For the convenience of the majority of those most likely to be affected in the administration of the provisions of this chapter, the administrator, upon recommendation of the commission, shall establish and maintain an office for the administrator within the state of Idaho. [I.C., § 22-4013, as added by 1988, ch. 194, § 1, p. 351.]

22-4014. State not liable for acts or omissions of commission or of its employees. — The state of Idaho is not liable for the acts or omissions of the commission or any member thereof or any officer, agent or employee thereof. [I.C., § 22-4014, as added by 1988, ch. 194, § 1, p. 351.]

22-4015. Imposition of tax. — (1) From and after the first day of July, 1997, there is hereby levied and imposed a tax of two cents (2¢) per hundredweight on all barley grown in the state of Idaho or given to Idaho growers under a crop reduction program, and sold or contracted in this state, and each and every crop grown or barley given to growers under a crop reduction program thereafter. The tax shall be due on barley given to growers under a crop reduction program and on barley sold or contracted through commercial channels in this state, regardless of any deduction of the tax on this same barley prior to it being given to the grower. The tax shall be due on or before the time when such barley is first sold or contracted in the commercial channels and shall be paid at such time or times as the commission may, by rule prescribe, as hereinafter provided, but not later than the 15th day of the month next succeeding the three (3) month period in which such barley is sold or contracted in commercial channels. The commission shall designate the quarters (three (3) month periods) for the purpose of collection of this tax.

(2) The tax shall be levied and assessed to the seller at the time of delivery for sale and shall be deducted by the first purchaser from the price paid to the seller at the time of sale or in case of a lienholder who may possess such barley under his lien, the tax shall be deducted by the lienholder from the proceeds of the claim secured by such lien at the time the barley is pledged or mortgaged. The tax shall be deducted as provided in this section whether the barley is stored in this or any other state. The commission may, however, permit any federal corporation, such as the commodity credit corporation, to waive its responsibility for the collection of the tax, provided the amount of the tax is one dollar (\$1.00) or less.

(3) The tax constitutes a lien prior to all other liens and encumbrances upon such barley except liens which are declared by operation of a statute of this state.

(4) Any person may request from the commission in writing, within thirty (30) days after payment thereof, a refund of all or any portion of an assessment levied hereunder on barley and paid by him. The commission shall make the refund not later than thirty (30) days after the end of the fiscal year in which the request is made. Refunds shall cease to be available beginning on the first July 1 following completion of a referendum for the continuation or discontinuation of refunds as described in section 22-4019, Idaho Code.

(5) A sale shall be exempt from the tax if a substantially similar tax is imposed by and paid to another state or foreign country and used for similar purposes with respect to the same barley. The commission shall by rule identify what other taxes are substantially similar and used for similar purposes, and shall establish procedures for sellers to prove the payment of the other taxes. [I.C., § 22-4015, as added by 1988, ch. 194, § 1, p. 351; am. 1997, ch. 157, § 4, p. 453.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

The commodity credit corporation (CCC) is a government-owned and operated entity that was created to stabilize, support, and protect farm income and prices. CCC also helps maintain balanced and adequate supplies of agricultural commodities and aids in their orderly distribution.

CCC was incorporated October 17, 1933,

under a Delaware charter. It was initially managed and operated in close affiliation with the reconstruction finance corporation, which funded its operations.

On July 1, 1939, CCC was transferred to the United States Department of Agriculture (USDA). It was reincorporated on July 1, 1948, as a federal corporation within USDA by the commodity credit corporation charter act (62 Stat. 1070; 15 U.S.C. 714), as amended through P.L. 110-246, effective May 22, 2008.

22-4016. Delivery of documents to sellers. — (1) The purchaser, at the time of settlement, shall make and deliver separate documents for each purchase to the sellers.

(2) The documents shall, at a minimum, contain the following information:

(a) The name and address of the seller.

(b) The name and address of the purchaser.

(c) The number of hundredweights of barley sold.

(d) The date of the purchase.

(3) The documents shall be legibly written and shall have no corrections or erasures on the face thereof.

(4) Unlawful or willful alteration of any document required under this chapter shall constitute a misdemeanor. [I.C., § 22-4016, as added by 1988, ch. 194, § 1, p. 351; am. 1997, ch. 157, § 5, p. 453.]

STATUTORY NOTES

Cross References. — Penalties for violation of chapter, § 22-4018.

22-4017. Payment of tax — Disposition of receipts. — The tax imposed in this chapter shall be paid by the first purchaser to the commission. The commission shall receipt the purchaser thereof and promptly deposit the moneys in an account as provided in section 22-4010,

Idaho Code. The commission may adopt, rescind, modify and amend regulations not inconsistent with this chapter, related to the payment and collection of the tax provided for in this chapter. [I.C., § 22-4017, as added by 1988, ch. 194, § 1, p. 351.]

22-4018. Penalties. — (1) Any person who shall violate or aid in the violation of any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof be punished by a fine of not more than three hundred dollars (\$300) or imprisonment not to exceed ninety (90) days, or both. Fines collected for violation of the provisions of this chapter shall be paid into the Idaho barley commission account.

(2) Any person or firm who makes payment to the commission at a date later than that prescribed in section 22-4015, Idaho Code, shall be subject to a late payment penalty as set forth by the commission by rule and regulation. Such penalty shall not exceed the rate of fifteen percent (15%) per annum on the amount due. [I.C., § 22-4018, as added by 1988, ch. 194, § 1, p. 351.]

22-4019. Referendum for barley growers. — (1) After five (5) years from the effective date of this section [July 1, 1988] a referendum shall be held to determine if barley growers favor the continuation of the refund provisions prescribed in section 22-4015, Idaho Code. The question shall be submitted by secret ballots upon which the words "Do you favor a barley commission that is funded by all growers with no refund provision?" are printed with a square before each of the printed words "YES" and "NO" with directions to insert an "X" mark in the square before the proposition which the voter favors. If a majority of the referendum vote is in favor of continuing the refund provision, the provisions of subsection (4) of section 22-4015, Idaho Code, shall be extended indefinitely or until such time that the commission deems it necessary to hold another referendum on the issue.

(2) After five (5) years from the effective date of the referendum required by the provisions of subsection (1) above, and every five (5) years thereafter, a referendum on the continuation of the barley commission may be held at the petition of barley growers, or at the request of the barley commission. The question shall be submitted by secret ballots upon which the words "Do you favor continuation of the barley commission?" are printed with a square before each of the printed words "YES" and "NO" with directions to insert an "X" mark in the square before the question which the voter favors. If a majority of the referendum vote is in favor of continuing the barley commission, all of the provisions of chapter 40, title 22, Idaho Code, shall continue. If a majority of the referendum vote is against continuing the barley commission, the assessment imposed by section 22-4015, Idaho Code, shall cease on the date the director of the department of agriculture announces the results of the referendum vote, and the commission shall prepare a plan for terminating all activities of the commission, effective as soon as possible, but not later than the close of the current fiscal year. If necessary, the director of the department of agriculture shall implement the provisions of the plan. The procedures necessary to initiate a referendum under the provisions of this subsection are as follows:

- (a) A referendum shall be held if the Idaho department of agriculture receives a petition requesting such referendum signed by ten percent (10%) or more of growers of barley in at least two (2) of the three (3) districts as outlined in section 22-4004, Idaho Code, as determined by the number of growers subject to the tax imposed by section 22-4015, Idaho Code, in either of the two (2) immediate past years; or
- (b) A referendum shall be held if the Idaho department of agriculture receives a written request for such referendum from the barley commission.
- (3)(a) Any referendum shall be conducted only among growers who paid a barley assessment during one (1) of the previous two (2) years, whether or not a refund of such assessment was requested or made.
- (b) Any referendum must be held and supervised by the Idaho department of agriculture.
- (c) Any referendum shall be held, and the result determined and declared by the director of the department of agriculture, and recorded in the office of the secretary of state.
- (d) Notice of any referendum must be given by the commission in a manner determined by it. The ballots must be prepared by the commission and forwarded to eligible growers, who shall return them within twenty (20) days after mailing by the commission.
- (e) The commission shall pay the costs of any referendum. [I.C., § 22-4019, as added by 1988, ch. 194, § 1, p. 351.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion in subsection (1) was added by the compiler.

CHAPTER 41

AGRICULTURAL LABOR LAW

SECTION.

22-4101 — 22-4113. [Repealed.]

22-4101 — 22-4113. Short title — Definitions — Agricultural labor board and fund created — Employees' rights — Employers' rights — Unfair labor practices — Lawful activities — Petition — Hearing — Representatives — Election — "Collective bargaining" defined — Power of the board — Hearings — Subpoenas — Penalties — Jurisdiction of courts — Powers — Limitation of provisions. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — The following sections were repealed by S.L. 2003, ch. 109, § 1, effective July 1, 2003.

§ 22-4101, which comprised 1972, ch. 204, § 1, p. 563.

§ 22-4102, which comprised 1972, ch. 204, § 2, p. 563.

§ 22-4103, which comprised 1972, ch. 204, § 3, p. 563; am. 1974, ch. 16, § 1, p. 304; am. 1976, ch. 51, § 7, p. 152; am. 1980, ch. 247,

- § 19, p. 582; am. 2001, ch. 183, § 5, p. 613.
 § 22-4104, which comprised 1972, ch. 204,
 § 4, p. 563.
 § 22-4105, which comprised 1972, ch. 204,
 § 5, p. 563.
 § 22-4106, which comprised 1972, ch. 204,
 § 6, p. 563.
 § 22-4107, which comprised 1972, ch. 204,
 § 7, p. 563.
 § 22-4108, which comprised 1972, ch. 204,
 § 8, p. 563.
 § 22-4109, which comprised 1972, ch. 204,
 § 9, p. 563.
 § 22-4110, which comprised 1972, ch. 204,
 § 10, p. 563.
 § 22-4111, which comprised 1972, ch. 204,
 § 11, p. 563.
 § 22-4112, which comprised 1972, ch. 204,
 § 12, p. 563.
 § 22-4113, which comprised 1972, ch. 204,
 § 13, p. 563; am. 1999, ch. 370, § 21, p. 976.

CHAPTER 42

ALFALFA AND CLOVER SEED INDUSTRIES

SECTION.

- 22-4201. Title of act.
 22-4202. Purpose.
 22-4203. Definitions.
 22-4204. Creation of commission — Members
 — Qualifications — Compensation.
 22-4205. Appointment of nominating committee — Presentation of nominees to annual meeting — Time and place of annual meeting.
 22-4206. Vacancies — Terms.
 22-4207. Powers and duties of commission.
 22-4208. Receipt of gifts — Payable to commission.
 22-4209. Liability of state for commission.
 22-4210. Assessment on alfalfa seed and clover seed.

SECTION.

- 22-4211. Time for payment of assessments — Recovery of payment from grower.
 22-4212. Request for refund of assessment — Manner of filing request.
 22-4213. Failure to pay assessment — Penalty.
 22-4214. Dealer's records of seed handled — Open to inspection by commissioner.
 22-4215. Deposit of assessments — Withdrawal method — Expenses — Bond required — Audit.
 22-4216. Increase in assessment.
 22-4217. Violation — Penalty.
 22-4218. Liberal construction.

22-4201. Title of act. — This act shall be known as the “Alfalfa and Clover Seed Industries Act.” [1974, ch. 184, § 1, p. 1481; am. 2000, ch. 201, § 2, p. 497.]

STATUTORY NOTES

Compiler's Notes. — The words “this act” refer to S.L. 1974, ch. 184, compiled as §§ 22-4201 to 22-4218.

Effective Dates. — Section 12 of S.L.

2000, ch. 201 declared an emergency retroactively to January 1, 2000 and approved April 5, 2000.

22-4202. Purpose. — It is hereby declared, as a matter of legislative determination, that it is to the best interests of all the people of the state of Idaho that the abundant and natural resources of Idaho be protected, fully developed and uniformly distributed; that economic waste threatens the alfalfa seed and clover seed industries in the state of Idaho by the lack of facilities and funds for research to develop and improve control measures for diseases and pests which attack alfalfa seed and clover seed pollinators, to improve alfalfa seed and clover seed growing culture and to disseminate information to the growers, and by lack of proper advertising and dissemination of information necessary for the development and promotion of alfalfa seed and clover seed grown in the state of Idaho; and that it is in the

interests of the people, welfare and general prosperity of the state of Idaho that this avoidable economic waste be eliminated by the growers having at their disposal all available information on the best and most advanced methods of culture, growing, harvesting and marketing of alfalfa seed and clover seed. The purpose of this act is to promote the general welfare of our people by improving the culture and production of and expanding the market for alfalfa seed and clover seed grown in the state of Idaho. [1974, ch. 184, § 2, p. 1481; am. 2000, ch. 201, § 3, p. 497.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-4201. 2000, ch. 201 declared an emergency retroactively to January 1, 2000 and approved April 5, 2000.

Effective Dates. — Section 12 of S.L.

22-4203. Definitions. — Wherever used or referred to in this act, unless the context requires otherwise:

(1) "Commission" means the Idaho alfalfa and clover commission.

(2) "Grower" means any landowner personally engaged in growing alfalfa seed or clover seed, a tenant personally engaged in growing alfalfa seed or clover seed, or both the owner and the tenant jointly, and includes a person, partnership, association, corporation, cooperative organization, trust, sharecropper or any and all other business units, devices and arrangements that grow alfalfa seed or clover seed.

(3) "Dealer" means any person, partnership, association, corporation, cooperative or other business unit or device that first handles, packs, ships, buys and sells alfalfa seed or clover seed, or who acts as sales or purchasing agent, broker or factor of alfalfa seed or clover seed.

(4) "Handled in the primary channels of trade" means the time when any alfalfa seed or clover seed is delivered under a sales contract, sold, or delivered for shipment and sale.

(5) "Ship" means to load alfalfa seed or clover seed into any mode of conveyance for transport in the channels of trade or to market.

(6) "Processor" and "processing plant" mean every person, partnership, association, corporation, cooperative or other business unit or device to whom and every place to which alfalfa seed or clover seed is delivered for cleaning, packing and blending. [1974, ch. 184, § 3, p. 1481; am. 2000, ch. 201, § 4, p. 497; am. 2006, ch. 365, § 1, p. 1103.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Prior Laws, § 22-4201.

Amendments. — The 2006 amendment, by ch. 365, deleted subsections (7) and (8), containing the definitions for "District No. 1" and "District No. 2"

Effective Dates. — Section 12 of S.L. 2000, ch. 201 declared an emergency retroactively to January 1, 2000 and approved April 5, 2000.

22-4204. Creation of commission — Members — Qualifications — Compensation. — There is hereby created an alfalfa and clover seed commission within the department of agriculture, to be thus known and

designated. The commission shall be composed of six (6) practical alfalfa seed or clover seed growers and one (1) practical alfalfa seed or clover seed dealer.

The six (6) grower members shall be citizens and residents of the state of Idaho, each of whom is and has been actively engaged in the growing and producing of alfalfa seed or clover seed within the state of Idaho, and a substantial portion of whose income has been derived from growing alfalfa seed or clover seed.

The one (1) dealer member shall be a person who, individually or as executive officer of a corporation, firm, partnership, association or cooperative organization, is and has been actively engaged as a dealer in alfalfa seed or clover seed within the state of Idaho, is a citizen and resident of this state, and a substantial portion of his income shall have been derived from handling, packing, shipping, buying and selling alfalfa seed or clover seed, or acting as sales or purchasing agent, broker or factor of alfalfa seed or clover seed.

The qualifications of members of the commission as herein set forth must continue during their term of office. Each member of the commission shall be compensated as provided by section 59-509(n), Idaho Code. [1974, ch. 184, § 4, p. 1481; am. 1980, ch. 247, § 20, p. 582; am. 1998, ch. 121, § 1, p. 451; am. 2000, ch. 201, § 5, p. 497.]

STATUTORY NOTES

Effective Dates. — Section 12 of S.L. 2000, ch. 201 declared an emergency retroactively to January 1, 2000 and approved April 5, 2000.

22-4205. Appointment of nominating committee — Presentation of nominees to annual meeting — Time and place of annual meeting.

— (1) The director of the department of agriculture shall appoint a grower nominating committee of three (3) growers, whose responsibility shall be to select a slate of nominees for vacancies occurring on the commission either by expiration of term or for other reasons a vacancy may occur. Two (2) grower members shall be nominated by the nominating committee for each vacancy occurring on the commission membership. The nominations of the nominating committee shall be presented to the annual meeting of alfalfa seed and clover seed growers for concurrence in the list of nominees, or for such substitutions to the list as the annual meeting may make by majority vote. Each member nominated for the commission shall be a resident citizen of the state of Idaho for a period of four (4) years prior to his election or selection, shall have active experience in growing alfalfa seed or clover seed and shall be now actually engaged in growing alfalfa seed or clover seed in Idaho and shall derive a substantial portion of his income from growing alfalfa seed or clover seed or be the directing or managing head of a corporation, firm, partnership, or other business unit which derives a substantial portion of its income from growing alfalfa seed or clover seed. To continue holding office, each member must remain qualified. The governor may remove any member who becomes disqualified during his term of office or who is unable to carry out his duties. The term of office of each member

of the commission shall terminate on the last day of June of the year in which the term for which the member was elected ends, but each member of the commission shall serve until his respective successor is elected and has qualified. From such list of nominees, the governor shall designate and appoint one (1) as a member of the commission. Said annual meeting shall be held at a time and place designated by the alfalfa and clover seed growers association with notification mailed to all alfalfa seed and clover seed growers in Idaho.

(2) A general meeting of the Idaho Eastern Oregon Seed Association shall nominate two (2) dealers, one (1) of whom shall be appointed as provided for in this act by June 30 of each year, and one (1) of whom shall be designated as alternate. [1974, ch. 184, § 5, p. 1481; am. 1998, ch. 121, § 2, p. 451; am. 2000, ch. 201, § 6, p. 497; am. 2006, ch. 365, § 2, p. 1103.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 365, in subsection (1), deleted “from each district” following “three (3) growers.”

Compiler’s Notes. — For words “this act”, see Compiler’s Notes, § 22-4201.

The name of the commissioner of agriculture has been changed to the director of the

department of agriculture on the authority of S.L. 1974, ch. 18, § 2. (§ 22-101).

Effective Dates. — Section 12 of S.L. 2000, ch. 201 declared an emergency retroactively to January 1, 2000 and approved April 5, 2000.

22-4206. Vacancies — Terms. — Any office which becomes vacant before expiration of the member’s term shall be filled by appointment in the manner provided for regular appointments, except that such office may remain vacant until the next annual meeting of the growers if the vacancy is for less than one (1) year.

Commencing on July 1, 1975, the grower members of the commission shall draw lots to determine their respective terms of office. Two (2) of the members shall serve for one (1) year; two (2) of the members shall serve for two (2) years; and two (2) of the members shall serve for three (3) years. The dealer member shall be appointed for a term of three (3) years. The term of office of the members of the commission thereafter shall be three (3) years, commencing on July 1, 1975.

Members of the commission may not serve more than two (2) consecutive terms, provided, upon serving two (2) consecutive terms, and the lapse of one (1) full term, such member may again be nominated and appointed to the commission. [1974, ch. 184, § 6, p. 1481.]

22-4207. Powers and duties of commission. — The powers and duties of the commission shall include the following:

(1) To administer and enforce this act.

(2) To contract in the name of the commission and be contracted with.

(3) To employ and at pleasure discharge a research director, research staff, a secretary, advertising manager, advertising agents, agents, attorneys, and such clerical and other help as it deems necessary and to control their powers and duties and to fix their compensation.

(4) To keep books, records and accounts of all its dealings, which books, records and accounts of all its dealings shall be open to inspection by the state controller at all times.

(5) To purchase or authorize the purchase of all office equipment and/or supplies and incur all other reasonable and necessary expenses and obligations in connection with and required for the proper carrying out of the provisions of this act.

(6) To become a member of and purchase membership in trade organizations and to subscribe to and purchase trade bulletins, journals and other trade publications.

(7) To plan and conduct a research program to improve the quality of alfalfa seed and clover seed, to develop and improve control measures for disease and pests which attack alfalfa and alfalfa seed pollinators and clover and clover seed pollinators and to improve alfalfa and clover growing culture and to disseminate such information among the growers and dealers of the state and to make such research contracts and other agreements as may be necessary.

(8) To plan and conduct a publicity and sales promotion campaign to increase the sale and use of Idaho alfalfa seed and clover seed and to make such publicity and sales promotion contracts and other agreements as may be necessary.

(9) To establish and maintain the executive offices of the commission at any place within the state of Idaho, which designated place may be changed at the discretion of the commission.

(10) To adopt and from time to time alter, rescind, modify or amend all proper and necessary rules and orders for the exercise of its powers and the performance of its duties under this act.

(11) To cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state, or the United States government, engaged in work or activities similar to the work and activities of the commission, and to enter into contracts or agreements with such organizations or agencies for carrying on a joint campaign of research, education, product protection, publicity and reciprocal enforcement of these objectives.

(12) To investigate and prosecute in the name of the state of Idaho violations of this act; to investigate and prosecute in the name of the state of Idaho any suit or action for the collection of assessments as hereinafter provided, or to protect brands, marks, packages, brand names or trademarks being promoted by the commission.

(13) To promote the sale and use of Idaho alfalfa seed and clover seed.

(14) To provide for and conduct a comprehensive and extensive research, promotion and educational campaign as continuous as the crop, sales and market conditions reasonably require. [1974, ch. 184, § 7, p. 1481; am. 1994, ch. 180, § 35, p. 420; am. 2000, ch. 201, § 7, p. 497.]

STATUTORY NOTES

Cross References. — State controller,
§ 67-1001 et seq.

Compiler's Notes. — For words "this act",
see Compiler's Notes, § 22-4201.

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on

November 8, 1994. Since such amendment was adopted, the amendment to this section by § 35 of S.L. 1994, ch. 180 became effective January 2, 1995.

Section 12 of S.L. 2000, ch. 201 declared an emergency retroactively to January 1, 2000 and approved April 5, 2000.

22-4208. Receipt of gifts — Payable to commission. — The commission may accept grants, donations and gifts of funds from any source for expenditure for any purpose consistent with this act, which may be specified as a condition of any grant, donation or gift. All funds received under the provisions of this act shall be paid to the Idaho alfalfa and clover seed commission. [1974, ch. 184, § 8, p. 1481; am. 2000, ch. 201, § 8, p. 497.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-4201.

2000, ch. 201 declared an emergency retroactively to January 1, 2000 and approved April 5, 2000.

Effective Dates. — Section 12 of S.L.

22-4209. Liability of state for commission. — The state of Idaho is not liable for the acts or omissions of the commission or any member thereof, or any officer, agent or employee thereof. [1974, ch. 184, § 9, p. 1481.]

22-4210. Assessment on alfalfa seed and clover seed. — There is hereby levied upon all alfalfa seed and clover seed grown annually in this state, all alfalfa seed sold as Idaho alfalfa seed and all clover seed sold as Idaho clover seed, an assessment of one-fourth cent ($1/4\text{¢}$) per pound of clean seed. All moneys collected hereunder shall be expended to effectuate the purposes and objects of this act. [1974, ch. 184, § 10, p. 1481; am. 2000, ch. 201, § 9, p. 497.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-4201.

2000, ch. 201 declared an emergency retroactively to January 1, 2000 and approved April 5, 2000.

Effective Dates. — Section 12 of S.L.

22-4211. Time for payment of assessments — Recovery of payment from grower. — All assessments levied and imposed under and pursuant to the provisions of this chapter shall be paid to the commission by the person, either grower or dealer, by whom the alfalfa seed or clover seed is first handled in the primary channels of trade and shall be paid at such times as the commission may by rule prescribe, but not later than sixty (60) days from the date on which the grower received payment for the alfalfa seed or clover seed. If the party first handling the alfalfa seed or clover seed in the primary channels of trade is a person other than the grower he may charge against or recover from the grower of such alfalfa seed or clover seed the full amount of any assessment levied and imposed under this chapter. [1974, ch. 184, § 11, p. 1481; am. 2000, ch. 201, § 10, p. 497.]

STATUTORY NOTES

Effective Dates. — Section 12 of S.L. 2000, ch. 201 declared an emergency retroactively to January 1, 2000 and approved April 5, 2000.

22-4212. Request for refund of assessment — Manner of filing request. — Any person who has paid assessments to the commission herein shall have the right to require such commission to refund all or any portion of the assessment levied under the laws of such commission and paid by the producer. All such requests shall be in writing, filed not later than the first of August of each calendar year, and shall be on forms to be provided without cost to all producers who pay assessments to such commission. [1974, ch. 184, § 12, p. 1481.]

22-4213. Failure to pay assessment — Penalty. — Any grower or dealer who fails to make collection or file return or to pay any assessment within the time required pursuant to this act shall thereby forfeit to the commission a penalty of five percent (5%) of the amount of the assessment determined to be due, as provided in this act, plus one percent (1%) of such amount for each month of delay or fraction thereof after the expiration of the month after such return was required to be filed or such assessment became due. The commission, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid to the commission and disposed of as provided with respect to moneys derived from the assessment levied and imposed by this act. [1974, ch. 184, § 13, p. 1481.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-4201.

22-4214. Dealer's records of seed handled — Open to inspection by commissioner. — Every dealer shall maintain accurate records of all alfalfa seed and clover seed handled, packed, shipped or processed by him. The record shall be in such form and contain such information as the commission may by rule prescribe, and shall be preserved for a period of two (2) years, and be subject to inspection at any time upon request of the commission or its agents. [1974, ch. 184, § 14, p. 1481; am. 2000, ch. 201, § 11, p. 497.]

STATUTORY NOTES

Effective Dates. — Section 12 of S.L. 2000, ch. 201 declared an emergency retroactively to January 1, 2000 and approved April 5, 2000.

22-4215. Deposit of assessments — Withdrawal method — Expenses — Bond required — Audit. — (1) All receipts for the commission will be deposited within five (5) working days of being received, all moneys received by the commission from the assessment levied under section 22-4210, Idaho Code, and all other moneys received by the commission shall

be deposited in one (1) or more separate accounts in the name of the commission in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such accounts at such banks or trust companies.

(2)(a) No moneys shall be withdrawn or paid out of such accounts except upon order of the commission and upon checks or other orders upon such accounts signed by such member of the commission as the commission designates. The commission shall establish and maintain an adequate and reasonable system of internal accounting controls. The internal accounting controls shall be written, approved and periodically reviewed by the commission. A receipt, voucher or other written record, showing clearly the nature and items covered by each check or other order, shall be kept.

(b) All moneys referred to in subsection (1) of this section shall be used by the commission only for the payment of expenses of the commission in carrying out the powers conferred on the commission.

(c) The commission may require any commission member or agent or employee appointed by the commission to give a bond payable to the commission in the amount and with the security and containing the terms and conditions the commission may prescribe. The cost of such bond is an administrative cost under this act.

(3) All moneys received or expended by the commission shall be audited every second year, but shall address each year separately, by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the director of legislative services and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year. The right is reserved to the state of Idaho to audit all funds of the commission at any time. [1974, ch. 184, § 15, p. 1481; am. 1998, ch. 121, § 3, p. 451; am. 2003, ch. 32, § 13, p. 115; am. 2006, ch. 361, § 1, p. 1098.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 22-4201.

Amendments. — The 2006 amendment, by ch. 361, in subsection (2)(a), substituted

the present second and third sentences for "and countersigned by such other member, officer or employee of the commission as the commission designates."

22-4216. Increase in assessment. — If it appears from an investigation that the revenue from the assessment levied under this act is inadequate to accomplish the purposes of this act, the commission shall file with the director of the department of agriculture a report showing the necessity of the industry, extent and probable cost of the required research, market promotion and advertising, extent of public convenience, interest and necessity, and probable revenue from the assessment desired to be levied. It may thereupon increase the assessment to a sum not to exceed one-half cent (1/2¢) per pound of clean seed; but no increase shall be made prior to filing of said report and favorable finding. [1974, ch. 184, § 16, p. 1481.]

STATUTORY NOTES

Compiler's Notes. — For words “this act” see Compiler's notes, § 22-4201.

22-4217. Violation — Penalty. — Every person who shall violate or aid in the violation of any of the provisions of this act, or any of the rules, regulations or order of the commission adopted pursuant to the authority conferred by this act, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars (\$300) or by imprisonment for a period not exceeding ninety (90) days or by both such fine and imprisonment and all fines collected for violation of this act shall be deposited as provided in section 22-4215. [1974, ch. 184, § 17, p. 1481.]

STATUTORY NOTES

Compiler's Notes. — For words “this act”, see Compiler's Notes, § 22-4201.

22-4218. Liberal construction. — This act shall be liberally construed, and if any part or portion thereof be declared invalid, or the application thereof to any person, circumstance or thing is declared invalid, the validity of the remainder of this act and/or the applicability thereof to any persons, circumstance or thing shall not be affected thereby, and it is the intention of the legislature to preserve any and all parts of this act if possible. [1974, ch. 184, § 18, p. 1481.]

STATUTORY NOTES

Compiler's Notes. — For words “this act”, see Compiler's Notes, § 22-4201.

Effective Dates. — Section 19 of S.L. 1974, ch. 184, read: “This act shall be in full force and effect on and after July 1, 1974,

except that the governor, and the commissioner of agriculture shall take all necessary actions prior to July 1, 1974, required to fully effect the purposes of this act on July 1, 1974.”

CHAPTER 43

WEATHER MODIFICATION DISTRICTS

SECTION.

22-4301. Establishment — Petition — Election. [Effective until January 1, 2011.]

22-4301. Establishment — Petition — Elec-

SECTION.

tion. [Effective January 1, 2011.]

22-4302. Weather modification fund — Creation — Administration.

22-4301. Establishment — Petition — Election. [Effective until January 1, 2011.] — (1) The county commissioners of any county shall, upon petition signed by not less than fifty (50) resident real property holders of said county, or any portion thereof, which may exclude incorporated cities, undertake the following procedure to determine the advisability of resolving to establish and maintain a weather modification district within the county as may be designated in the petition.

- (a) A petition to form a weather modification district shall be presented to the county clerk and recorder. The petition shall be signed by not less than fifty (50) of the resident real property holders within the proposed district. The petition shall designate the boundaries of the district.
- (b) The petition shall be filed with the county clerk and recorder of the county in which the signers of the petition are located. Upon the filing of the petition the county clerk shall examine the petition and certify whether the required number of petitioners have signed the petition. If the number of petition signers is sufficient, the clerk shall transmit the petition to the board of county commissioners.
- (c) Upon receipt of a duly certified petition the board of county commissioners shall give notice of an election to be held, subject to the provisions of section 34-106, Idaho Code, in such proposed district for the purpose of determining whether or not the proposed district shall be organized and to elect the first board of trustees for the district. Such notice shall include the date and hours of the election, the polling places, the maximum percent of market value for assessment purposes of taxable property within the district which the proposed district will be permitted to levy, the general purposes of the proposed district, a description of lands to be included in the proposed district, a statement that a map of the proposed district is available in the office of the board of county commissioners, and the names and terms of the members to be elected to the first board of trustees. The notice shall be published once each week for three (3) consecutive weeks prior to such election, in a newspaper of general circulation within the county.
- (d) The election shall be held and conducted consistent with the provisions of chapter 14, title 34, Idaho Code. The board of county commissioners shall appoint three (3) judges of election, one (1) of whom shall act as clerk for the election. At such election the electors shall vote for or against the organization of the district, and the members of the first board of trustees.
- (e) The judges of election shall certify the returns of the election to the board of county commissioners. If a majority of the votes cast at said election are in favor of the organization, the board of county commissioners shall declare the district organized and give it a name by which, in all proceedings, it shall thereafter be known, and shall further designate the first board of trustees elected, and thereupon the district shall be a legal taxing district.
- (f) On the first Tuesday of February, in the second calendar year after the organization of any district, and on the first Tuesday of February every year thereafter an election shall be held, which shall be known as the annual election of the district.
- At the first annual election in any district hereafter organized, and each third year thereafter, there shall be elected by the qualified electors of the district, one (1) member of the board to serve for a term of three (3) years; at the second annual election and each third year thereafter, there shall be elected one (1) member of the board to serve for a term of three (3) years, and at the third annual election, and each third year thereafter, there shall be elected one (1) member of the board to serve for a term of three (3) years.

Not later than the sixth Friday before any such election, nominations may be filed with the secretary of the board and if a nominee does not withdraw his name before the first publication of the notice of election, his name shall be placed on the ballot. The board shall provide for holding such election and shall appoint judges to conduct it. The secretary of the district shall give notice of election by publication, and shall arrange such other details in connection therewith as the board may direct. The returns of the election shall be certified to and shall be canvassed and declared by the board. The candidate or candidates receiving the most votes shall be elected.

In any election for trustees, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that only one (1) qualified candidate has been nominated for a trustee position, it shall not be necessary for the candidate to stand for election, and the board of trustees of the district shall declare such candidate elected as trustee, and the secretary of the district shall immediately make and deliver to such person a certificate of election. [1975, ch. 145, § 1, p. 334; am. 1982, ch. 254, § 2, p. 646; am. 1995, ch. 118, § 11, p. 417.]

STATUTORY NOTES

Compiler's Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 22-4301. As enacted, this section did not contain a subsection (2).

JUDICIAL DECISIONS

Cited in: Greater Boise Auditorium Dist. v. Royal Inn, 106 Idaho 884, 684 P.2d 286 (1984).

22-4301. Establishment — Petition — Election. [Effective January 1, 2011.] — (1) The county commissioners of any county shall, upon petition signed by not less than fifty (50) resident real property holders of said county, or any portion thereof, which may exclude incorporated cities, undertake the following procedure to determine the advisability of resolving to establish and maintain a weather modification district within the county as may be designated in the petition.

(a) A petition to form a weather modification district shall be presented to the county clerk and recorder. The petition shall be signed by not less than fifty (50) of the resident real property holders within the proposed district. The petition shall designate the boundaries of the district.

(b) The petition shall be filed with the county clerk and recorder of the county in which the signers of the petition are located. Upon the filing of the petition the county clerk shall examine the petition and certify whether the required number of petitioners have signed the petition. If the number of petition signers is sufficient, the clerk shall transmit the petition to the board of county commissioners.

(c) Upon receipt of a duly certified petition the board of county commissioners shall give notice of an election to be held, subject to the provisions of section 34-106, Idaho Code, in such proposed district for the purpose of determining whether or not the proposed district shall be organized and

to elect the first board of trustees for the district. Such notice shall include the date and hours of the election, the polling places, the maximum percent of market value for assessment purposes of taxable property within the district which the proposed district will be permitted to levy, the general purposes of the proposed district, a description of lands to be included in the proposed district, a statement that a map of the proposed district is available in the office of the board of county commissioners, and the names and terms of the members to be elected to the first board of trustees. The notice shall be published once each week for three (3) consecutive weeks prior to such election, in a newspaper of general circulation within the county.

(d) The election shall be held and conducted consistent with the provisions of chapter 14, title 34, Idaho Code. The county clerk shall appoint judges of election, one (1) of whom shall act as clerk for the election. At such election the electors shall vote for or against the organization of the district, and the members of the first board of trustees.

(e) The county clerk shall certify the returns of the election to the board of county commissioners. If a majority of the votes cast at said election are in favor of the organization, the board of county commissioners shall declare the district organized and give it a name by which, in all proceedings, it shall thereafter be known, and shall further designate the first board of trustees elected, and thereupon the district shall be a legal taxing district.

(f) On the third Tuesday of May, in the next odd-numbered calendar year after the organization of any district, and on the third Tuesday of May every odd-numbered year thereafter, an election shall be held.

At the election in any district hereafter organized, there shall be elected by the qualified electors of the district, two (2) members of the board to serve for a term of four (4) years; at the next odd-numbered year election, there shall be elected one (1) member of the board to serve for a term of four (4) years.

Not later than the sixth Friday before any such election, nominations may be filed with the secretary of the board and if a nominee does not withdraw his name before the first publication of the notice of election, his name shall be placed on the ballot. The county clerk shall conduct such election, shall appoint judges, shall give notice of election by publication, and shall arrange such other details in connection therewith. The returns of the election shall be certified to and shall be canvassed and declared by the board. The candidate or candidates receiving the most votes shall be elected.

In any election for trustees, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that only one (1) qualified candidate has been nominated for a trustee position, it shall not be necessary for the candidate to stand for election, and the board of trustees of the district shall declare such candidate elected as trustee, and the secretary of the district shall immediately make and deliver to such person a certificate of election. [1975, ch. 145, § 1, p. 334; am. 1982, ch. 254, § 2, p. 646; am. 1995, ch. 118, § 11, p. 417; am. 2009, ch. 341, § 6, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes. — For this section as effective until January 1, 2011, see the pre-

ceding section, also numbered § 22-4301.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

22-4302. Weather modification fund — Creation — Administration. — The board of trustees of a weather modification district shall conduct the affairs of the district. The board of trustees shall certify a budget to the board of county commissioners to fund the operations of the district. The budget preparation, hearings and approval shall be the same as required for any county budget. The certification of the budget to the board of county commissioners shall be as required for other taxing districts. The board of county commissioners may levy annually upon all taxable property in the weather modification district, a tax not to exceed four (4) mills, to be collected and paid into the county treasury and apportioned to a fund to be designated the "weather modification" fund, which is hereby created. Such fund shall be used by the district for the gathering of information upon, aiding in or conducting programs for weather control or modification, and such activities related to weather modification programs as are necessary to insure the full benefit of such programs. Moneys in the fund may be paid out only on order of the board of trustees. [1975, ch. 145, § 2, p. 334.]

CHAPTER 44

IDAHO AQUACULTURE COMMISSION

SECTION.

22-4401. Legislative intent.

22-4402. Definitions.

22-4403. Idaho aquaculture commission —
Established — Composition —
Qualification of members —
Meetings.

22-4404. Powers and duties.

SECTION.

22-4405. Deposit and disbursement of funds
— Audits — Reports.

22-4406. State not liable.

22-4407. Assessments.

22-4408. Refunds.

22-4409. Opt out alternative.

22-4401. Legislative intent. — The aquaculture industry is one of the agricultural industries that contributes to the economic welfare of the state. It is the purpose of this chapter to promote the public health and welfare of the citizens of the state by providing means for the protection, promotion, study, research, analysis and development of markets relating to the growing and marketing of Idaho aquaculture products and Idaho aquaculture byproducts. [I.C., § 22-4401, as added by 2004, ch. 350, § 1, p. 1042.]

STATUTORY NOTES

Prior Laws. — Former chapter 44 of Title 22, which comprised the following sections, was repealed by S.L. 2002, ch. 89, § 1:

22-4401. Purpose. [I.C., § 22-4401, as added by 1978, ch. 364, § 1, p. 952.]

22-4402. Application of insecticide required. [I.C., § 22-4402, as added by 1978, ch. 364, § 1, p. 952.]

22-4403. Rules and regulations. [I.C., § 22-4403, as added by 1978, ch. 364, § 1, p. 952.]

22-4404. Application of insecticides authorized. [947, ch. 110, § 4, p. 226; am. 1974, ch. 18, § 42, p. 364.]

22-4402. Definitions. — As used in this chapter:

(1) “Aquaculture” means the husbandry of fish, aquatic animals and plants, and the processing for sale of the same, both public and private.

(2) “Commission” means the Idaho aquaculture commission.

(3) “Processor” means a facility where aquaculture products are delivered for the purpose of processing the product for sale, and shall for the purposes of membership on the commission, include persons owning, operating or otherwise participating in the operation of the facility.

(4) “Producer” means the owner or tenant of a facility, hatchery, pond, lake, stream or other water facility where fish or other aquatic animals and plants are raised, held or produced for sale. [I.C., § 22-4402, as added by 2004, ch. 350, § 1, p. 1042.]

STATUTORY NOTES

Prior Laws. — Former § 22-4402 was repealed. See Prior Laws, § 22-4401.

22-4403. Idaho aquaculture commission — Established — Composition — Qualification of members — Meetings. — (1) A commission on Idaho aquaculture, hereinafter referred to in this chapter as “the commission,” is hereby established in the department of self-governing agencies. The commission shall be composed of five (5) members appointed by the governor as follows:

(a) Three (3) members shall be from the producer segment of the industry;

(b) Two (2) members shall be from the processor segment of the industry. Nominations for the initial appointments to the commission shall be made pursuant to the provisions of subsection (6) of this section.

(2) Members must meet the following qualifications:

(a) Be a United States citizen and a resident of the state of Idaho;

(b) Be over the age of twenty-five (25) years;

(c) Producer members shall be persons who have been actively engaged in the production of an aquaculture product within the state of Idaho with a major portion of their income from aquaculture derived from commercial fisheries, whether operating as a sole proprietor, partnership, corporation, limited liability company, cooperative, or other business entity;

(d) Processor members shall be persons who have been actively engaged as processors within the state of Idaho with a major portion of their income from aquaculture derived from aquaculture processing, sales, handling, packing, shipping, or buying and selling aquaculture products as an agent or broker, whether operating as a sole proprietor, partnership, corporation, limited liability company, cooperative, or other business entity;

(e) No more than one (1) person from any partnership, corporation, limited liability company, cooperative, or other business entity shall serve as a member of the commission at the same time.

(3) Each member of the commission shall be appointed by the governor for a term of three (3) years. Provided however, that the initial appointments in the first year shall be appointments of two (2) years for one (1) producer member, three (3) years for two (2) producer members, two (2) years for one (1) processor member and three (3) years for one (1) processor member. No member of the commission may be removed by the governor during his or her term of office unless for cause of incapacity, incompetence, neglect of duty, malfeasance in office, or failure to continue to meet the qualifications set forth in subsection (2) of this section. In the event a commissioner vacancy occurs prior to the expiration of a scheduled term, the commission shall conduct a meeting and nominate two (2) nominees. The names of the nominees shall be submitted to the governor who shall appoint one (1) of the nominees to fill the unexpired term.

(4) Members shall serve no more than two (2) consecutive terms without the lapse of one (1) full term occurring prior to being eligible for reappointment.

(5) Members shall serve without compensation from the state.

(6) Nominations for the initial appointments to the commission under subsection (1) of this section shall be made in the following manner:

(a) At the time of the effective date of this act [July 1, 2004], the Idaho aquaculture association shall set a date, time and location for a meeting where nominations for membership shall be voted upon;

(b) At least thirty (30) days prior to the meeting date, the association shall send written notification setting forth the date, time and location of such meeting to all producers and processors in the state of Idaho, regardless of whether a producer or processor is a member of the association;

(c) At least thirty (30) days prior to the meeting date, the association shall post written notice of the meeting in places of business involved in the aquaculture industry;

(d) At least thirty (30) days prior to the meeting date, the association shall provide written notice of the meeting to the department of agriculture and, upon receipt, the department shall post the notice on their official website.

No less than two (2) nominees shall be chosen for submission to the governor for each vacancy. Nominations as voted upon at the time of the meeting shall be submitted to the governor within fourteen (14) days of the meeting. The governor shall make appointments to the commission within thirty (30) days of receipt of nominations.

(7) The commission shall elect a chair from among its members each calendar year. After its original organizational meeting, the commission shall meet at the call of the chair or by a consensus of three (3) members of the commission. A majority of the members of the commission constitutes a quorum and an official action of the commission may be taken with a majority vote of the quorum. The commission shall, at a minimum, conduct quarterly meetings of the commission and an annual meeting of all producers and processors. Notification of the date, time and location of annual meetings shall be made in accordance with the provisions set forth

in paragraphs (b), (c) and (d) of subsection (6) of this section. Nominations for terms on the commission that are scheduled to expire prior to the next annual meeting shall be voted upon during the annual meeting and submitted to the governor. No less than two (2) nominees shall be chosen for submission to the governor for each upcoming vacancy. [I.C., § 22-4403, as added by 2004, ch. 350, § 1, p. 1042.]

STATUTORY NOTES

Prior Laws. — Former § 22-4403 was repealed. See Prior Laws, § 22-4401. tion in paragraph (6)(a) was added by the compiler.

Compiler's Notes. — The bracketed inser-

22-4404. Powers and duties. — The powers and duties of the commission shall include the following:

(1) To contract in the name of the commission and be contracted with, to sue and be sued;

(2) To appoint, employ, prescribe duties, fix compensation, and at its pleasure discharge, all necessary agents, employees, professional personnel and other personnel, including experts in aquaculture and the publicizing of products;

(3) To keep books, records, and accounts of all its dealings, including minutes of commission meetings;

(4) To establish an office or offices, to incur expenses, and to create liabilities as reasonable for the proper administration of the commission;

(5) To determine new markets for aquaculture products, to conduct promotional activities relating to the national and international use of aquaculture products;

(6) To provide and to publicize reliable information relating to the value of aquaculture products determined to be useful and profitable;

(7) To conduct research, and to investigate and study problems relative to the industry;

(8) To promote and protect the sale of aquaculture products;

(9) To cooperate with agencies of this state, other states and the federal government, engaged in similar work to that of the commission and enter into agreements or contracts with such agencies;

(10) To adopt, amend and rescind rules in conjunction with the exercise of its powers and duties pursuant to the provisions of this chapter. [I.C., § 22-4404, as added by 2004, ch. 350, § 1, p. 1042.]

STATUTORY NOTES

Prior Laws. — Former § 22-4404 was repealed. See Prior Laws, § 22-4401.

22-4405. Deposit and disbursement of funds — Audits — Reports.

— (1) The commission may accept assessment receipts, grants, donations and gifts of funds from any source for expenditure for any purpose consistent with this chapter which may be specified as a condition of any grant, donation or gift. All funds received under the provisions of this

chapter or as provided by law shall be deposited into one (1) or more separate accounts in the name of the commission in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. At the option of the commission, an account known as the "Idaho Aquaculture Commission Account," to be administered by the Idaho aquaculture commission, may be created and established in the state treasury for the deposit of such funds. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter. Any interest earned on the investment of idle moneys in an account shall be returned to the account.

(2) Funds can be withdrawn or paid out of bank accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current fiscal year and a projection of anticipated expenses by category for the current fiscal year. The report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited every second year, but shall address every year distinctly, by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the director of legislative services and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year. [I.C., § 22-4405, as added by 2004, ch. 350, § 1, p. 1042.]

STATUTORY NOTES

Cross References. — State controller,
§ 67-1001 et seq.

22-4406. State not liable. — The state of Idaho is not liable for the acts or omissions of the commission or any member thereof, or any officer, agent or employee thereof. [I.C., § 22-4406, as added by 2004, ch. 350, § 1, p. 1042.]

22-4407. Assessments. — (1) From and after the first day of July 2004, there is hereby imposed an assessment of five cents (5¢) per hundred weight on the production of aquaculture products produced or grown in Idaho for purpose of profit. Thereafter, the commission is authorized to establish the rate of assessment by rule, up to a maximum assessment rate of ten cents

(10¢) per hundred weight on the production of aquaculture products produced or grown in Idaho for purpose of profit.

(2) With the exception of the assessments pursuant to subsection (3) of this section, assessments shall be collected by the processor and deducted from payments to the producer. The processor shall remit all assessments to the commission within fifteen (15) days of the end of each calendar quarter, along with the name, address and dollar amount of each producer's respective assessment. The commission shall maintain records identifying the specific amount of assessment collected from each producer.

(3) Producers shall be responsible for submitting assessments on aquaculture products sold for human consumption, pond stocking, or live aquaculture products sold directly to the public, to retailers or to a governmental entity. Producers shall remit the assessments to the commission by the fifteenth day of the month following the sale, along with a verification of the amount of product so sold. [I.C., § 22-4407, as added by 2004, ch. 350, § 1, p. 1042.]

22-4408. Refunds. — Within thirty (30) days following the end of a calendar quarter, a producer that does not support the program established under this chapter, may request in writing that the commission refund all or a portion of assessments remitted to the commission by the producer, or remitted on his behalf. Any producer that fails to request a refund within the thirty (30) day period pursuant to the provisions of this section shall be deemed to have waived their right to do so. Within thirty (30) days of receipt of the written request for refund, the commission shall reimburse the producer the requested refund amount, provided the commission determines from its records that the amount so requested was actually remitted to the commission by the producer, or on his behalf. [I.C., § 22-4408, as added by 2004, ch. 350, § 1, p. 1042.]

22-4409. Opt out alternative. — (1) Each and every year, any producer may, at his election, opt out of application of all provisions of this chapter, including assessment provisions. In order to opt out of application of the provisions of this chapter, a producer shall comply with the following requirements:

- (a) On an annual basis, no later than June 30 of each year, submit a letter to the Idaho aquaculture commission, stating his intent to opt out of application of the provisions of the chapter for the upcoming fiscal year;
- (b) The letter shall include the producer's name and address.

(2) The Idaho aquaculture commission, upon formation, shall provide written notice of their mailing address to the department of agriculture and, upon receipt, the department shall post the address on their official website. The commission shall also set forth their mailing address by rule. [I.C., § 22-4409, as added by 2004, ch. 350, § 1, p. 1042.]

CHAPTER 45

RIGHT TO FARM

SECTION.

22-4501. Legislative findings and intent.

22-4502. Definitions.

22-4503. Agricultural operation not a nuisance — Exception.

SECTION.

22-4504. Local ordinances.

22-4501. Legislative findings and intent. — The legislature finds that agricultural activities conducted on farmland in urbanizing areas are often subjected to nuisance lawsuits, and that such suits encourage and even force the premature removal of the lands from agricultural uses, and in some cases prohibit investments in agricultural improvements. It is the intent of the legislature to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance. The legislature also finds that the right to farm is a natural right and is recognized as a permitted use throughout the state of Idaho. [I.C., § 22-4501, as added by 1981, ch. 177, § 1, p. 311.]

JUDICIAL DECISIONS

Application.

In a nuisance action brought by citizens claiming that the neighboring feedlot operation was a nuisance because of recent expansions of the operation, the Idaho Right to Farm Act did not protect the expanding agricultural operation from being declared a nuisance because this act applies to the en-

croachment of “urbanizing areas” and to situations where there have been changes in “surrounding nonagricultural activities” and not to situations in which the expanding agricultural operation is surrounded by an area that has remained substantially unchanged. *Payne v. Skaar*, 127 Idaho 341, 900 P.2d 1352 (1995).

22-4502. Definitions. — As used in this chapter:

(1) “Agricultural operation” includes, without limitation, any facility for the growing, raising or production of agricultural, horticultural and viticultural crops and vegetable products of the soil, poultry and poultry products, livestock, field grains, seeds, hay, apiary and dairy products, and the processing for commercial purposes of livestock or agricultural commodities, including the processing of such commodities into food commodities.

(2) “Nonagricultural activities,” for the purposes of this chapter, means residential, commercial or industrial property development and use not associated with the production of food commodities.

(3) “Improper or negligent operation” means that the agricultural operation is not undertaken in conformity with federal, state and local laws and regulations or permits, and adversely affects the public health and safety. [I.C., § 22-4502, as added by 1981, ch. 177, § 1, p. 311; am. 1997, ch. 341, § 1, p. 1025; am. 1999, ch. 377, § 1, p. 1035.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1999, ch. 377 declared an emergency. Approved March 26, 1999.

JUDICIAL DECISIONS

Agricultural Operation.

Where the pleadings disclosed that the hog operation was alleged to be a nuisance, not because of changes in surrounding nonagricultural uses, but because of an expansion of the operation itself, and where the

owner defendants failed to demonstrate that their hog raising facility was a non-agricultural activity, they were not protected under the RFTA. *Crea v. Crea*, 135 Idaho 246, 16 P.3d 922 (2000).

22-4503. Agricultural operation not a nuisance — Exception. —

No agricultural operation or an appurtenance to it shall be or become a nuisance, private or public, by any changed conditions in or about the surrounding nonagricultural activities after the same has been in operation for more than one (1) year, when the operation was not a nuisance at the time the operation began; provided, that the provisions of this section shall not apply whenever a nuisance results from the improper or negligent operation of any agricultural operation or an appurtenance to it. In the event of an alleged nuisance resulting from agricultural operations pursuant to a federal or state environmental permit or caused by a violation of the permit(s), terms or conditions, the affected party shall seek enforcement of the terms of the permit. [I.C., § 22-4503, as added by 1981, ch. 177, § 1, p. 311; am. 1999, ch. 377, § 2, p. 1035.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates. — Section 3 of S.L. 1999, ch. 377 declared an emergency. Approved March 26, 1999.

JUDICIAL DECISIONS

ANALYSIS

Application.
Conditional use permit.

Application.

In a nuisance action brought by citizens claiming that the neighboring feedlot operation was a nuisance because of recent expansions of the operation, the Idaho Right to Farm Act did not protect the expanding agricultural operation from being declared a nuisance because this act applies to the encroachment of "urbanizing areas" and to situations where there have been changes in "surrounding nonagricultural activities" and not to situations in which the expanding agricultural operation is surrounded by an area that has remained substantially unchanged.

Payne v. Skaar, 127 Idaho 341, 900 P.2d 1352 (1995).

Conditional Use Permit.

County board of commissioners did not violate the Idaho Right to Farm Act when it granted a conditional use permit to an applicant for the subdivision of a portion of the applicant's farmland, where the board required the applicant to include right to farm marketing disclosures and right to farm deed restrictions, thereby acting in accordance with this section. *Whitted v. Canyon County Bd. of Comm'rs*, 137 Idaho 118, 44 P.3d 1173 (2002).

22-4504. Local ordinances. — No city, county, taxing district or other political subdivision of this state shall adopt any ordinance or resolution that declares any agricultural operation operated in accordance with generally recognized agricultural practices to be a nuisance nor shall any zoning ordinance that forces the closure of any such agricultural operation

be adopted. Zoning and nuisance ordinances shall not apply to agricultural operations that were established outside the corporate limits of a municipality and then were incorporated into the municipality by annexation. The county planning and zoning authority may adopt a nuisance waiver procedure to be recorded with the county recorder or appropriate county recording authority pursuant to residential divisions of property. [I.C., § 22-4504, as added by 1994, ch. 107, § 2, p. 238; am. 1997, ch. 341, § 2, p. 1025.]

STATUTORY NOTES

Prior Laws. — Former § 22-4504, which comprised I.C., § 22-4504, as added by 1981, ch. 177, § 1, p. 311, was repealed by S.L. 1994, ch. 107, § 1, effective July 1, 1994.

CHAPTER 46

COMMERCIAL FISH FACILITIES

SECTION.

22-4601. Definitions.

22-4602. License required — Purchases —
Inspections.

22-4603. Rules.

SECTION.

22-4604. Penalties.

22-4605. Commercial fisheries/aquaculture
account.

22-4601. Definitions. — As used in this chapter:

(1) “Aquaculture” means the husbandry of aquatic plants and animals, both public and private.

(2) “Aquaculture facility” means any facility, hatchery, pond, lake or stream or any other waters where fish are held, raised and produced for sale.

(3) “Aquatic life” means all types of aquatic plants and animals or wildlife (invertebrate or vertebrate), approved for importation by the director of the department of fish and game pursuant to authority granted to him by the fish and game commission pursuant to the commission’s authority under section 36-104(b)(6), Idaho Code, and all life stages whether publicly or privately held.

(4) “Department” means the Idaho department of agriculture.

(5) “Director” means the director of the department of agriculture.

(6) “Person” means an individual, partnership, corporation, company or other business entity and any agent or officer of any partnership, corporation, company or other business entity. [I.C., § 22-4601, as added by 1992, ch. 273, § 1, p. 844; am. 1994, ch. 363, § 1, p. 1137.]

STATUTORY NOTES

Compiler’s Notes. — The words enclosed in parentheses so appeared in the law as enacted.

22-4602. License required — Purchases — Inspections. — (1) No person shall obtain, possess, preserve, or propagate fish in this state for the purpose of selling the same unless he has first secured a commercial fish rearing license from the director. Such license may be issued by the director upon his finding that:

- (a) Such commercial facility is not constructed in or across any natural streambed, lake or other watercourse containing wild fish.
 - (b) Any dam constructed to divert water into said facility meets all the requirements of section 36-906(a), Idaho Code.
 - (c) All water inlets to said facility are screened in the manner provided in section 36-906(b), Idaho Code.
 - (d) The application for such license is made upon a form provided by the department which sets forth such reasonable information as may be required by the director.
 - (e) The effluent control facilities have been approved by the legally designated state and federal agencies.
 - (f) The approved application is accompanied by a license fee of twenty-five dollars (\$25.00).
- (2) A valid license must be obtained for each separate location. Licenses shall expire February 1 in each even-numbered year; biennially thereafter.
- (3) A receipt shall be issued to each purchaser identifying the hatchery source and specifying the numbers and species of fish and the date of sale for all sales from fish ponds for a fee and for the sale of live fish for stocking destined for release as wild fish in private or public waters.
- (4) The director may, from time to time, inspect a licensed facility to determine conformity of the facility with the licensing requirements of this section and for purposes of determining the species of fish being propagated at the facility. [I.C., § 22-4602, as added by 1992, ch. 273, § 1, p. 844.]

22-4603. Rules. — The director is authorized to promulgate rules in accordance with chapter 52, title 67, Idaho Code, for the administration and implementation of this chapter including, but not limited to, rules concerning onsite inspections, standards for maintenance of fish health and standards for marketing. The director is further authorized to develop and conduct research programs addressing environmental issues and other issues related to the industry. In the development of such rules and programs, the director shall consult with representatives of commercial fisheries and the aquaculture industry. [I.C., § 22-4603, as added by 1992, ch. 273, § 1, p. 844; am. 1994, ch. 363, § 2, p. 1137.]

22-4604. Penalties. — Any person violating the provisions of this chapter or any rule promulgated by the director pursuant thereto shall be subject to an administrative penalty not to exceed one thousand dollars (\$1,000) for each offense. In addition to or in lieu of such penalty, the director is authorized to suspend for up to one (1) year or revoke any license issued hereunder. Proceedings under this section shall be conducted in the manner provided for contested cases in chapter 52, title 67, Idaho Code. If the department is unable to collect any administrative penalty assessed hereunder, or if any person fails to pay all or a portion of the administrative penalty assessed hereunder, the department may recover such amount by action in the appropriate district court.

Penalties collected for violations under this section shall be deposited in the commercial fisheries/aquaculture account. [I.C., § 22-4604, as added by 1992, ch. 273, § 1, p. 844; am. 1994, ch. 363, § 3, p. 1137.]

STATUTORY NOTES

Cross References. — Commercial fisheries/aquaculture account, § 22-4605.

22-4605. Commercial fisheries/aquaculture account. — License fees and penalties collected under section 22-4604, Idaho Code, and any other moneys received by the department for research or other purposes related to commercial fisheries or aquaculture shall be deposited in the commercial fisheries/aquaculture account which is hereby created in the state treasury. Moneys in the account shall be used solely for carrying out the provisions of this chapter. [I.C., § 22-4605, as added by 1992, ch. 273, § 1, p. 844; am. 1994, ch. 363, § 4, p. 1137.]

CHAPTER 47

IDAHO OILSEED RESEARCH AND DEVELOPMENT ACT

SECTION.

- 22-4701. Short title.
- 22-4702. Declaration of legislative policy and purpose.
- 22-4703. Definitions.
- 22-4704. Idaho oilseed commission created — Members.
- 22-4705. Qualification of members.
- 22-4706. Terms of members.
- 22-4707. Compensation of members.
- 22-4708. Chairman and administrator of commission.
- 22-4709. Meetings of the commission.
- 22-4710. Duties and powers of the commission.
- 22-4711. Commission accepting grants, donations and gifts.
- 22-4712. Bonds of agents and employees.

SECTION.

- 22-4713. Appointment of administrator — Duties and salary.
- 22-4714. Establishment of administrator's office.
- 22-4715. State not liable for acts or omissions of commission or of its employees.
- 22-4716. Imposition of tax — Late fees.
- 22-4717. Assessment refunds — Escrow account.
- 22-4718. Referendum.
- 22-4719. Delivery of invoices to sellers.
- 22-4720. Deposits and disbursement of funds.
- 22-4721. Temporary line of credit for start-up costs.
- 22-4722. Penalties.

22-4701. Short title. — This chapter shall be known and may be cited as the "Oilseed Research and Development Act." [I.C., § 22-4701, as added by 1996, ch. 216, § 1, p. 703; am. 2007, ch. 60, § 2, p. 143.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 60, substituted "chapter" for "act" and "Oilseed" for "Canola and Rapeseed."

22-4702. Declaration of legislative policy and purpose. — It is in the best interests of the state of Idaho that its abundant natural resources be efficiently used and effectively managed for the benefit of its citizens. The oilseed industry is rapidly developing and significantly contributing to the economic welfare of Idaho. The products provided are an important and nutritious part of the human diet. Domestic demand exceeds what is produced in the United States. Moreover, the world market for oilseeds continues to expand. Idaho farmers are in an excellent position to take

advantage of this demand. The university of Idaho leads the nation in research on canola and rapeseed. The research effort is critical to the competitiveness of Idaho growers and must be expanded and enhanced. It is the purpose of this chapter to promote the public health and welfare of the citizens of the state by implementing a program of research, promotion, and consumer and industry information designed to strengthen the position in the marketplace of the Idaho oilseed industry, to expand existing markets, and to develop new markets for oilseed and their products. [I.C., § 22-4702, as added by 1996, ch. 216, § 1, p. 703; am. 2007, ch. 60, § 3, p. 143.]

STATUTORY NOTES

Amendments. — The 2007 amendment, “canola and rapeseed” in the second sentence and twice in the last sentence. by ch. 60, deleted “of act” from the end of the section catchline; substituted “oilseed” for

22-4703. Definitions. — As used in this chapter, unless the context requires otherwise:

(1) “Commercial channels” means the sale of oilseeds for food, feed, seed, or any industrial or chemurgic use, when sold to any commercial buyer, user, dealer, processor, cooperative, or to any person, public or private, who resells any oilseed or any product produced from oilseed.

(2) “Commission” means the Idaho oilseed commission.

(3) “Delivery” means placing of oilseed into the primary channels of trade.

(4) “First purchaser” means any person, partnership, association, corporation, cooperative, trust, estate, or any and all other business units, devices and arrangements that buy oilseed in this state in the first instance, or any lienholder, public or private, including the commodity credit corporation, who may possess oilseed from the grower under any lien.

(5) “Grower” means any landowner, or tenant of the landowner, personally engaged in growing oilseed, or both the owner and tenant jointly, and includes a person, partnership, association, corporation, cooperative, trust, estate, sharecropper, or any and all other business units, devices and arrangements.

(6) “Oilseed” means seeds produced for use as oil, meal, planting seed, condiment, or other industrial or chemurgic uses.

(7) “Sale” includes any pledge, mortgage, or delivery of oilseed for sale after harvest to any person, public or private.

(8) “Seller” means any person or entity, including growers, who sells oilseed in the first instance. [I.C., § 22-4703, as added by 1996, ch. 216, § 1, p. 703; am. 2007, ch. 60, § 4, p. 143.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 60, throughout the section, substituted “oilseed” for “canola, rapeseed or mustard” or similar language; deleted former subsection (1), which was the definition for “Canola or

rapeseed” and redesignated subsections accordingly, adding present subsection (6).

Compiler’s Notes. — The commodity credit corporation (CCC) is a government-owned and operated entity that was created

to stabilize, support, and protect farm income and prices. CCC also helps maintain balanced and adequate supplies of agricultural commodities and aids in their orderly distribution.

CCC was incorporated October 17, 1933, under a Delaware charter. It was initially managed and operated in close affiliation with the reconstruction finance corporation, which funded its operations.

On July 1, 1939, CCC was transferred to the United States Department of Agriculture (USDA). It was reincorporated on July 1, 1948, as a federal corporation within USDA by the commodity credit corporation charter act (62 Stat. 1070; 15 U.S.C. 714), as amended through P.L. 110-246, effective May 22, 2008.

22-4704. Idaho oilseed commission created — Members. — There is hereby created and established in the department of self-governing agencies a commission which shall be exclusively known and referred to as the Idaho oilseed commission on and after the effective date of this act [July 1, 2007]. The commission shall be composed of three (3) members appointed by the governor at the recommendation of a representative group of oilseed growers in the state of Idaho. Commission members appointed by the governor shall hold office for a term of three (3) years. The commissioners may appoint a representative from the supporting oilseed industry, who is not a grower, to serve as an ex officio member of the commission without voting privileges. The dean of the college of agriculture, university of Idaho, or his duly authorized representative, and the director of the department of agriculture shall also be ex officio members of the commission without voting privileges. [I.C., § 22-4704, as added by 1996, ch. 216, § 1, p. 703; am. 2007, ch. 60, § 5, p. 143.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 60, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes. — The bracketed insertion in the first sentence was added by the compiler.

22-4705. Qualification of members. — Members of the commission shall be nominated and appointed because of their ability and willingness to serve the interests of the state of Idaho and their knowledge of the state's natural resources. Members shall be citizens of the United States, over twenty-five (25) years of age, and residents of the state of Idaho who are actually engaged in the growing of oilseed in the state and have been for at least the three (3) years immediately preceding appointment. Members must derive a substantial portion of their income from growing oilseed in the state of Idaho. [I.C., § 22-4705, as added by 1996, ch. 216, § 1, p. 703; am. 2007, ch. 60, § 6, p. 143.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 60, twice substituted "oilseed" for "canola or rapeseed"; and deleted the former last two sentences, which related to the geo-

graphical boundaries of production districts and the number of members to be appointed from each district.

22-4706. Terms of members. — Beginning July 1, 1996, the first members of the commission shall be appointed by the governor for terms of one (1) to three (3) years each as follows: at-large member, one (1) year;

southern district member, two (2) years; northern district member, three (3) years. At the expiration of their original terms, commission members shall be appointed for a term of three (3) years. No member shall serve more than two (2) consecutive full terms. Each member shall hold office until his successor is appointed and qualified. Appointments to fill vacancies shall be for the balance of the unexpired term. [I.C., § 22-4706, as added by 1996, ch. 216, § 1, p. 703.]

22-4707. Compensation of members. — Members of the commission shall be compensated as provided in section 59-509(h), Idaho Code. [I.C., § 22-4707, as added by 1996, ch. 216, § 1, p. 703.]

22-4708. Chairman and administrator of commission. — The commission shall elect a chairman who is a commission member and may employ an administrator who is not a member of the commission, or may contract with another state agricultural commission or similar agency for the administration of the commission's business. [I.C., § 22-4708, as added by 1996, ch. 216, § 1, p. 703; am. 2007, ch. 60, § 7, p. 143.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 60, deleted "canola and rapeseed" preceding "commission's business."

22-4709. Meetings of the commission. — The commission shall meet at least once every three (3) months regularly and at other times as required by the chairman. The chairman may call special meetings of the commission at any time or place. [I.C., § 22-4709, as added by 1996, ch. 216, § 1, p. 709.]

22-4710. Duties and powers of the commission. — (1) The commission shall establish the policies to be followed in the accomplishment of and consistent with the general purposes of this chapter.

(2) In the administration of this chapter, the commission shall have the following duties, authorities and powers:

- (a) To conduct a campaign of research, education and publicity.
- (b) To find new markets for oilseed and oilseed products.
- (c) To give, publicize and promulgate reliable information showing the value of oilseed and oilseed products for any purpose for which they are found useful and profitable.
- (d) To make public and encourage the widespread national and international use of the special kinds of oilseed and oilseed products produced from all varieties of oilseed grown in Idaho.
- (e) To investigate and participate in studies of the problems peculiar to the growers of oilseed in Idaho.

(3) The commission shall have the duty, power and authority:

- (a) To take action as the commission deems necessary or advisable to stabilize and protect the oilseed industry of the state and the health and welfare of the public.

- (b) To sue and be sued.
- (c) To enter into contracts as may be necessary or advisable.
- (d) To appoint and employ officers, agents and other personnel, including experts in agriculture and the publicizing of agricultural products, and to prescribe their duties and fix their compensation.
- (e) To advertise as the commission deems advisable and to enter into contracts and agreements for research and advertising within and without the state.
- (f) To cooperate with any local, state, or national organization or agency, whether voluntary or created by the law of any state or by federal law, engaged in work or activities similar to the work and activities of the commission, and to enter into contracts and agreements with those organizations or agencies for carrying on joint campaigns of research, education, publicity and reciprocal enforcement.
- (g) To lease, purchase or own the real or personal property deemed necessary in the administration of this chapter.
- (h) To prosecute in the name of the state of Idaho any suit or action for collection of the tax or assessment provided for in this chapter.
- (i) To adopt, rescind, modify and amend all necessary and proper orders, resolutions and rules for the procedures and exercise of its powers and the performance of its duties.
- (j) To incur indebtedness and carry on all business activities.
- (k) To keep books and records and accounts of all its doings, which books, records and accounts shall be open to inspection by the state controller at all times.
- (l) Except as otherwise provided in this chapter, information obtained from books, records, and accounts required to be maintained by this chapter and pertaining to individual production records of oilseed growers shall be kept confidential, and shall not be disclosed to the public by any person. [I.C., § 22-4710, as added by 1996, ch. 216, § 1, p. 703; am. 2007, ch. 60, § 8, p. 143.]

STATUTORY NOTES

Cross References. — State controller, § 67-1001 et seq.

Amendments. — The 2007 amendment, by ch. 60, throughout the section, substituted “chapter” for “act” and “oilseed” for “canola or

rapeseed,” or similar language; and in the introductory language in subsection (2), deleted “in conjunction with the pacific northwest rapeseed/canola association, inc.” following “the commission shall.”

22-4711. Commission accepting grants, donations and gifts. —

The commission may accept grants, donations and gifts of funds from any source for expenditure for any purpose consistent with this chapter which may be specified as a condition of any grant, donation or gift. All funds received under the provisions of this chapter shall be paid into a bank account in the name of the Idaho oilseed commission and such moneys are hereby continuously appropriated and made available for defraying the expenses of the commission in carrying out the provisions of this chapter. [I.C., § 22-4711, as added by 1996, ch. 216, § 1, p. 703; am. 2007, ch. 60, § 9, p. 143.]

STATUTORY NOTES

Amendments. — The 2007 amendment, “oilseed” for “canola and rapeseed” and “chapter” for “act.”

22-4712. Bonds of agents and employees. — The administrator, or any agent or employee appointed by the commission shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. The cost of the bond is an administrative expense under this act. [I.C., § 22-4712, as added by 1996, ch. 216, § 1, p. 703.]

STATUTORY NOTES

Compiler’s Notes. — The words “this act” refer to S.L. 1996, ch. 216 which is compiled as §§ 22-4701 — 22-4722.

22-4713. Appointment of administrator — Duties and salary. — The commission may appoint an administrator to devote as much time to the administration of the act as deemed necessary by the commission. He shall proceed immediately to prepare the plans and general program necessary and proper to carry out the policies that are adopted by the commission. The administrator shall be paid a reasonable salary fixed by the commission, commensurate with his duties, and all necessary expenses. The administrator shall serve at the discretion of the commission members. [I.C., § 22-4713, as added by 1996, ch. 216, § 1, p. 703.]

STATUTORY NOTES

Compiler’s Notes. — The term “the act”, in the first sentence, means the oilseed research and development act. See § 22-4701.

22-4714. Establishment of administrator’s office. — For the convenience of the majority of those most likely to be affected in the administration of this chapter, the administrator, upon recommendation of the commission, shall establish and maintain an office for the administrator. [I.C., § 22-4714, as added by 1996, ch. 216, § 1, p. 703; am. 2007, ch. 60, § 10, p. 143.]

STATUTORY NOTES

Amendments. — The 2007 amendment, the pacific northwest rapeseed/canola association, inc.” from the end. by ch. 60, substituted “chapter” for “act,” and deleted “within the geographic area served by

22-4715. State not liable for acts or omissions of commission or of its employees. — The state of Idaho is not liable for the acts or omissions of the commission or any of its members, or any officer, agent or employee of the commission. [I.C., § 22-4715, as added by 1996, ch. 216, § 1, p. 703.]

22-4716. Imposition of tax — Late fees. — (1) From and after the first day of July 1996, there is hereby levied and imposed a tax of ten cents (10¢) per hundred weight on all oilseed sold or contracted in this state through commercial channels. The tax shall be due on or before the time when the oilseed is first sold or contracted in the commercial channels in this state and shall be paid at the times the commission may by rule prescribe, but not later than the 15th day of the month next succeeding the three (3) month period in which the oilseed is sold or contracted in commercial channels. The commission shall designate the quarters (three (3) month periods) for the purpose of collection of this tax.

(2) The tax shall be levied and assessed to the seller at the time of delivery for sale and shall be deducted by the first purchaser from the price paid to the seller at the time of sale, or in case of a lienholder who may possess the oilseed under his lien, the tax shall be deducted by the lienholder from the proceeds of the claim secured by the lien at the time the oilseed is pledged or mortgaged. The tax shall be deducted as provided in this section whether the oilseed is stored in this state or elsewhere. The commission may, however, permit any federal corporation, such as the commodity credit corporation, to waive its responsibility for the collection of the tax, provided the amount of the tax is one dollar (\$1.00) or less.

(3) The tax constitutes a lien prior to all other liens and encumbrances upon the oilseed, except liens which are declared prior by operation of a statute of this state.

(4) Any person or firm who pays taxes to the commission at a date later than that prescribed in this section may be subject to assessment of a late payment penalty as set forth by rule of the commission. The penalty shall not exceed the rate of eighteen percent (18%) per annum on the amount due. In addition to the penalty, the commission may recover all costs and fees, including reasonable attorney's fees, incurred in collecting the tax and penalty provided for in this section.

(5) A sale shall be exempt from the tax imposed in this section if a substantially similar tax is imposed by and paid to another state or foreign country and used for similar purposes with respect to the same oilseed. The commission shall, by rule, identify what other taxes are substantially similar and are used for similar purposes, and shall establish procedures for sellers to prove the payment of the other taxes. [I.C., § 22-4716, as added by 1996, ch. 216, § 1, p. 703; am. 2007, ch. 60, § 11, p. 143.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 60, substituted "oilseed" for "canola or rapeseed" throughout the section.

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

The commodity credit corporation (CCC) is a government-owned and operated entity that was created to stabilize, support, and protect farm income and prices. CCC also helps maintain balanced and adequate supplies of agri-

cultural commodities and aids in their orderly distribution.

CCC was incorporated October 17, 1933, under a Delaware charter. It was initially managed and operated in close affiliation with the reconstruction finance corporation, which funded its operations.

On July 1, 1939, CCC was transferred to the United States Department of Agriculture (USDA). It was reincorporated on July 1, 1948, as a federal corporation within USDA

by the commodity credit corporation charter act (62 Stat. 1070; 15 U.S.C. 714), as amended through P.L. 110-246, effective May 22, 2008.

22-4717. Assessment refunds — Escrow account. — (1) During the period beginning on July 1, 1996, and ending on the date on which a referendum is conducted pursuant to section 22-4718, Idaho Code, the commission shall establish an escrow account to be used for refunds of assessments collected pursuant to section 22-4716, Idaho Code, and shall place an amount equal to ten percent (10%) of the total amounts collected in the escrow account. At the conclusion of each fiscal year, any balance in the escrow account after paying refund claims shall be transferred to one (1) or more of the accounts established by the commission pursuant to section 22-4720, Idaho Code.

(2) The commission shall refund to a seller the assessments paid by or on behalf of the seller if the seller is required to pay the assessments, the seller does not support the program established under this act, and the seller demands the refund prior to the time prescribed by the commission in rules of the commission.

(3) The refund demand shall be made in accordance with rules, in the form, and within the time period prescribed by the commission.

(4) The refund shall be made on submission of proof satisfactory to the commission that the seller paid the assessments described in section 22-4716, Idaho Code, and for which the refund is demanded.

(5) If the amount in the escrow account is not sufficient to refund the total amount of assessments demanded by eligible sellers and the commission is not approved to continue pursuant to the referendum conducted pursuant to this act, the commission shall prorate the amount of the refunds among all eligible sellers who demand a refund.

(6) If the operation of the commission is approved in the referendum conducted pursuant to this act, all funds remaining in the escrow account shall be returned to the commission for its use in accordance with this act. [I.C., § 22-4717, as added by 1996, ch. 216, § 1, p. 703; am. 1998, ch. 241, § 1, p. 800.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1996, ch. 216 which is compiled as §§ 22-4701 — 22-4722.

Effective Dates. — Section 2 of S.L. 1998, ch. 241 declared an emergency and provided

this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1998. Approved March 20, 1998.

22-4718. Referendum. — (1) During the period ending thirty (30) months after July 1, 1996, the commission shall conduct a referendum among sellers who, during a representative period as determined by the rules of the commission, have sold oilseed for the purpose of ascertaining whether the commission shall continue.

(2) Notice shall be given to sellers eligible to vote in the referendum in accordance with rules established by the commission.

(3) If a majority of the eligible sellers approve, the commission will be continued and the refund provisions will be terminated.

(4) If a majority of eligible sellers do not approve to continue the commission, collection of the tax under this chapter shall be terminated.

(5) If a majority of the eligible sellers approve of continuing the commission in the original referendum, at intervals of five (5) years, the commission shall conduct an advisory poll of qualified sellers as to the effectiveness and continuation of the commission. [I.C., § 22-4718, as added by 1996, ch. 216, § 1, p. 703; am. 2007, ch. 60, § 12, p. 143.]

STATUTORY NOTES

Amendments. — The 2007 amendment, “oilseed” for “canola or rapeseed”; and in sub- by ch. 60, in subsection (1), substituted section (4), substituted “chapter” for “act.”

22-4719. Delivery of invoices to sellers. — (1) The purchaser, at the time of settlement, shall make and deliver separate invoices for each purchase to the seller.

(2) The invoices shall be on forms and in such numbers as prescribed and supplied by the commission and shall show at least:

- (a) The name and address of the seller.
- (b) The name and address of the purchaser.
- (c) The number of pounds of oilseed sold.
- (d) The date of purchase.

(3) The invoices shall be legibly written and shall have no corrections or erasures on the face thereof.

(4) Unlawful or willful alteration of an invoice shall constitute a misdemeanor. [I.C., § 22-4719, as added by 1996, ch. 216, § 1, p. 703; am. 2007, ch. 60, § 13, p. 143.]

STATUTORY NOTES

Cross References. — Penalties for viola- by ch. 60, substituted “oilseed” for “canola or tions of chapter, § 22-4722. rapeseed” in subsection (2)(c).

Amendments. — The 2007 amendment,

22-4720. Deposits and disbursement of funds. — (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one (1) or more separate accounts in the name of the commission in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate the banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) No moneys shall be withdrawn or paid out of such accounts except upon order of the commission and upon checks or other orders upon such accounts signed by such member of the commission as the commission designates. The commission shall establish and maintain an adequate and reasonable system of internal accounting controls. The internal accounting controls shall be written, approved and periodically reviewed by the commission.

(3) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house of representatives agricultural affairs committee, the legislative council, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year. From and after January 15, 1999, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(4) All moneys received or expended by the commission shall be audited every second year, but shall address each year separately, by a certified public accountant designated by the commission, who shall furnish a copy of the audit to the director of legislative services and to the senate agricultural affairs committee and the house of representatives agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year. The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(5) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code. [I.C., § 22-4720, as added by 1996, ch. 216, § 1, p. 703; am. 2003, ch. 32, § 14, p. 115; am. 2005, ch. 56, § 1, p. 210; am. 2006, ch. 363, § 1, p. 1100.]

STATUTORY NOTES

Cross References. — State controller, § 67-1001 et seq.

Amendments. — The 2006 amendment, by ch. 363, in subsection (2), substituted “No moneys shall” for “Funds can” at the beginning; substituted “except upon order of the

commission and” for “only”; substituted “such member of the commission as the commission designates” for “two (2) officers designated by the commission” and added the last two sentences.

22-4721. Temporary line of credit for start-up costs. — There is hereby established a temporary line of credit to be drawn from the state general fund to the commission in the amount of ten thousand dollars (\$10,000). This sum is continuously appropriated for carrying out the purposes of this act. The temporary line of credit may be drawn upon by the commission only during the first eighteen (18) months after the effective date of this act [July 1, 1996] and only for the purpose of financing the initial start-up of the commission. The commission may draw upon all or part of this temporary line of credit, as may be required. The money advanced from the state general fund shall be repaid with interest to the general fund within two (2) years from the date the commission first draws upon the temporary line of credit. The interest of ten percent (10%) per annum shall be calculated upon the principal amount outstanding each month until repaid. [I.C., § 22-4721, as added by 1996, ch. 216, § 1, p. 703.]

STATUTORY NOTES

Compiler’s Notes. — For words “this act”, see Compiler’s Notes, § 22-4701.

The bracketed insertion was added by the compiler.

22-4722. Penalties. — Any person who shall violate or aid in the violation of any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than three hundred dollars (\$300), or imprisonment not to exceed ninety (90) days, or both. Fines collected for violation of this chapter shall be paid into the “Idaho oilseed commission fund.” [I.C., § 22-4722, as added by 1996, ch. 216, § 1, p. 703; am. 2007, ch. 60, § 14, p. 143.]

STATUTORY NOTES

Amendments. — The 2007 amendment, and substituted “oilseed” for “canola and rapeseed.” by ch. 60, twice substituted “chapter” for “act”

CHAPTER 48

SMOKE MANAGEMENT AND CROP RESIDUE DISPOSAL

SECTION.

22-4801 — 22-4804. [Repealed.]

22-4801. Legislative findings and intent. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — This section, which comprised I.C., § 22-4801, as added by 1999, ch. 378, § 2, p. 1036; am. 2001, ch. 103, § 5, p. 253; am. 2003, ch. 316, § 1, p. 864, was repealed by S.L. 2008, ch. 71, § 4, effective March 7, 2008. For present comparable provisions, see § 39-114.

22-4802. Definitions. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — This section, which comprised I.C., § 22-4802, as added by 1999, ch. 378, § 2, p. 1036; am. 2001, ch. 103, § 6, p. 253; am. 2005, ch. 139, § 1, p. 431, a.m. 2006, ch. 121, § 1, page 338, was repealed by S.L. 2008, ch. 71, § 4, effective March 7, 2008. For present comparable provisions, see § 39-114.

22-4803. Agricultural field burning. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — This section, which comprised I.C., § 22-4803, as added by 1999, ch. 378, § 2, p. 1036; am. 2003, ch. 262, § 1, p. 697; am. 2003, ch. 316, § 2, p. 864, was repealed by S.L. 2008, ch. 71, § 4, effective March 7, 2008. For present comparable provisions, see § 39-114.

22-4803A. Violations — Penalties — Inspection — Complaints. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — This section, which comprised I.C., § 22-4803A, as added by 2003, ch. 316, § 3, p. 864, was repealed by S.L. 2008, ch. 71, § 4, effective March 7, 2008. For present comparable provisions, see § 39-114.

22-4804. Registered counties — Agricultural burning fees — Account — Rules — Research — Management program. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 22-4804, as added by 1999, ch. 378, § 2, p. 1036; am. 2003, ch. 316, § 4, p. 864; a.m. 2004, ch. 197, § 1, p. 609, was repealed by S.L. 2008, ch. 71, § 4, effective March 7, 2008. For present comparable provisions, see § 39-114.

Section 3 of S.L. 2008, ch. 71 provided "Any

moneys in the state Agricultural Smoke Management Account referenced in Section 22-4804, Idaho Code, which are unexpended or unencumbered on June 30, 2008, shall be paid over to the State Treasurer by the Department of Agriculture and deposited in the General Fund."

CHAPTER 49

BEEF CATTLE ENVIRONMENTAL CONTROL ACT

SECTION.

22-4901. Short title.

22-4902. Declaration of policy and statement of legislative intent.

22-4903. Authority and duties of director concerning beef cattle animal feeding operations.

22-4904. Definitions.

22-4905. Design and construction.

SECTION.

22-4906. Nutrient management plan.

22-4907. Inspections.

22-4908. Discharges.

22-4909. Enforcement.

22-4909A. Effect of federal environmental protection agency enforcement action.

22-4910. Safe harbor.

22-4901. Short title. — This chapter shall be known and cited as the "Beef Cattle Environmental Control Act." [I.C., § 22-4901, as added by 2000, ch. 63, § 1, p. 138.]

STATUTORY NOTES

Compiler's Notes. — Section 2 of S.L. 2000, ch. 63 provided that this chapter would be null and void after March 31, 2001, unless the Idaho department of agriculture negotiated an acceptable memorandum of understanding with the EPA and others to carry out that act. That memorandum of understanding was reached and signed in November 2000. Consequently this chapter did not become null and void after March 31, 2001.

standing with the EPA and others to carry out that act. That memorandum of understanding was reached and signed in November 2000. Consequently this chapter did not become null and void after March 31, 2001.

OPINIONS OF ATTORNEY GENERAL

Because the legislature has authorized both the counties and the state to regulate confined animal feeding operations (CAFOs), and because these authorities overlap, it is unlikely that a court would conclude the state has

completely occupied the field of CAFO regulation or that state law provides an exclusive regulatory program that preempts all local regulation. OAG 08-01.

22-4902. Declaration of policy and statement of legislative intent. — (1) The legislature recognizes the importance of protecting state natural resources including, surface water and ground water. It is the intent of the legislature to protect the quality of these natural resources while maintaining an ecologically sound, economically viable, and socially responsible beef cattle industry in the state. The beef cattle industry produces manure and process wastewater which, when properly used, supplies

valuable nutrients and organic matter to soils and is protective of the environment, but may, when improperly stored and managed, create adverse impacts on natural resources, including waters of the state. This chapter is intended to ensure that manure and process wastewater associated with beef cattle operations are handled in a manner which protects the natural resources of the state.

(2) Further, the legislature recognizes that the beef cattle industry is potentially subject to various state and federal laws designed to protect state natural resources and that the Idaho department of agriculture is in the best position to administer and implement these various laws. It is therefore the intent of the legislature that the administration of this law by the department of agriculture fully meets the goals and requirements of the federal clean water act and state laws designed to further protect state waters and that administration of this chapter by the department of agriculture shall not be more stringent than or broader in scope than the requirements of the clean water act and applicable state and federal laws. The department shall have authority to administer all laws to protect the quality of water within the confines of a beef cattle animal feeding operation. In carrying out this chapter the department shall prioritize its resources on operations which have the greatest potential to significantly impact the environment and ensure that any requirements imposed under this chapter upon operators of beef cattle animal feeding operations are cost-effective and economically, environmentally and technologically feasible.

(3) Successful implementation of this chapter is dependent upon the department receiving adequate funding from the legislature and is dependent upon the department executing a memorandum of agreement with the United States environmental protection agency, the department of environmental quality and the Idaho cattle association which sets forth a working arrangement between the agencies to ensure compliance with this chapter and applicable state and federal laws, including the federal clean water act. Moreover, the legislature recognizes that it is important for the state to obtain a delegated national pollutant discharge elimination system (NPDES) permit program from the EPA under the clean water act. [I.C., § 22-4902, as added by 2000, ch. 63, § 1, p. 138; am. 2001, ch. 103, § 7, p. 253; am. 2004, ch. 187, § 1, p. 578.]

STATUTORY NOTES

Cross References. — Department of environmental quality, § 39-104 to 39-106.

Federal References. — The federal clean water act, referenced in subsection (2) and in subsection (3), is codified as 33 U.S.C.S. § 1251 et seq.

Compiler's Notes. — For Idaho cattle association, see <http://idahocattle.org>.

Section 2 of S.L. 2000, ch. 63 provided that

this chapter would be null and void after March 31, 2001, unless the Idaho department of agriculture negotiated an acceptable memorandum of understanding with the EPA and others to carry out that act. That memorandum of understanding was reached and signed in November 2000. Consequently this chapter did not become null and void after March 31, 2001.

22-4903. Authority and duties of director concerning beef cattle animal feeding operations. — (1) The director of the department of

agriculture through the division of animal industries is authorized to regulate beef cattle animal feeding operations to protect state natural resources, including surface water and ground water.

(2) In order to carry out its duties under this chapter, the department shall be the responsible state department to prevent any ground water contamination from beef cattle animal feeding operations as provided under section 39-120, Idaho Code.

(3) The director shall have the authority to exercise any other authorities delegated by the director of the department of environmental quality regarding the protection of ground water, surface water and other natural resources associated with confined animal feeding operations, and this shall be the authority for the director of the department of environmental quality to so delegate.

(4) The director of the department of environmental quality shall consult with the director of the department of agriculture before certifying discharges from beef cattle animal feeding operations as provided under 33 U.S.C. section 1341. [I.C., § 22-4903, as added by 2000, ch. 63, § 1, p. 138; am. 2001, ch. 103, § 8, p. 253; am. 2004, ch. 187, § 2, p. 578.]

STATUTORY NOTES

Cross References. — Director of department of environmental quality, § 39-104.

Division of animal industries, § 25-201 et seq.

Compiler's Notes. — Section 2 of S.L. 2000, ch. 63 provided that this chapter would be null and void after March 31, 2001, unless

the Idaho department of agriculture negotiated an acceptable memorandum of understanding with the EPA and others to carry out that act. That memorandum of understanding was reached and signed in November 2000. Consequently this chapter did not become null and void after March 31, 2001.

22-4904. Definitions. — When used in this chapter:

(1) "Administrator" means the administrator, or his designee, for the animal industries division of the Idaho department of agriculture.

(2) "Beef cattle" means slaughter and feeder cattle or dairy heifers that are kept on or contiguous to the animal feeding operation and are owned or controlled by the animal feeding operation.

(3) "Beef cattle animal feeding operation" means an animal feeding operation which confines slaughter and feeder cattle or dairy heifers as defined in 40 CFR 122.23(b)(1), (b)(2), (b)(4), (b)(6) or (b)(9).

(4) "Best management practices" means practices, techniques or measures which are determined to be reasonable precautions, are a cost-effective and practicable means of preventing or reducing pollutants from point sources or nonpoint sources to a level compatible with environmental goals, including water quality goals and standards for waters of the state. Best management practices for water quality shall be adopted pursuant to the state water quality management plan, the Idaho ground water quality plan or this chapter.

(5) "Department" means the Idaho department of agriculture.

(6) "Director" means the director of the Idaho department of agriculture or his designee.

(7) "Manure" means animal excrement that may also contain bedding, spilled feed, water or soil.

(8) "Modification" or "modified" means structural changes and alterations to the wastewater storage containment facility which would require increased storage or containment capacity or such changes which would alter the function of the wastewater storage containment facility.

(9) "Noncompliance" means a practice or condition that causes an unauthorized discharge, or a practice or condition, that if left uncorrected, will cause an unauthorized discharge.

(10) "National pollutant discharge elimination system (NPDES)" means the point source permitting program established pursuant to section 402 of the federal clean water act.

(11) "Nutrient management plan" means a plan prepared in conformance with the nutrient management standard, provisions required by 40 CFR 122.42(e)(1), or other equally protective standard for managing the amount, placement, form and timing of the land application of nutrients and soil amendments.

(12) "Nutrient management standard" means the 1999 publication by the United States department of agriculture, natural resources conservation service, conservation practice standard, nutrient management code 590 or other equally protective standard approved by the director.

(13) "Person" means any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties.

(14) "Process wastewater" means liquid containing beef cattle manure, process generated wastewater and any precipitation which comes into direct contact with livestock manure and facility products or byproducts.

(15) "Unauthorized discharge" means a discharge of process wastewater or livestock manure to state surface waters that is not authorized by an NPDES permit or the release of process wastewater or livestock manure to waters of the state that does not meet the requirements of this chapter or water quality standards.

(16) "Wastewater storage and containment facilities" means the portion of an animal feeding operation where manure or process wastewater is stored or collected. This may include corrals, feeding areas, waste collection systems, waste conveyance systems, waste storage ponds, waste treatment lagoons and evaporative ponds.

(17) "Waters of the state" means all accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state. [I.C., § 22-4904, as added by 2000, ch. 63, § 1, p. 138; am. 2004, ch. 187, § 3, p. 578.]

STATUTORY NOTES

Federal References. — Section 402 of the federal clean water act, referred to in subsection (10), is codified as 33 U.S.C.S. § 1342.

Compiler's Notes. — Section 2 of S.L. 2000, ch. 63 provided that this chapter would

be null and void after March 31, 2001, unless the Idaho department of agriculture negotiated an acceptable memorandum of understanding with the EPA and others to carry out that act. That memorandum of understand-

ing was reached and signed in November 2000. Consequently this chapter did not become null and void after March 31, 2001.

22-4905. Design and construction. — Each new beef cattle animal feeding operation and each modified beef cattle animal feeding operation shall design and construct all new and modified wastewater storage and containment facilities in accordance with the engineering standards and specifications provided by the natural resource conservation service or the American society of agricultural engineers (ASAE) [American society of agricultural and biological engineers (ASABE)] or other equally protective standard approved by the director. The department's review and approval of plans under this section shall supersede the Idaho department of environmental quality's implementation of plan and specification review and approval provided under section 39-118, Idaho Code. Such design and construction shall be considered a best management practice. [I.C., § 22-4905, as added by 2000, ch. 63, § 1, p. 138; am. 2001, ch. 103, § 9, p. 253.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion in the first sentence was added by the compiler. See <http://www.asabe.org>.

Section 2 of S.L. 2000, ch. 63 provided that this chapter would be null and void after March 31, 2001, unless the Idaho department of agriculture negotiated an acceptable mem-

orandum of understanding with the EPA and others to carry out that act. That memorandum of understanding was reached and signed in November 2000. Consequently this chapter did not become null and void after March 31, 2001.

22-4906. Nutrient management plan. — Each beef cattle animal feeding operation shall submit a nutrient management plan to the director for approval. Beef cattle animal feeding operations that are operating on or before July 1, 2000, shall submit a nutrient management plan to the director for approval no later than January 1, 2005. Any new operation commencing operations after July 1, 2000, shall not operate prior to the director's approval of a nutrient management plan. An approved nutrient management plan shall be implemented and considered a best management practice. Following department review and approval, the plan, and all copies of the plan, shall be returned to the operation and maintained on site. Such plans shall be available to the administrator on request. [I.C., § 22-4906, as added by 2000, ch. 63, § 1, p. 138; am. 2004, ch. 187, § 4, p. 578.]

STATUTORY NOTES

Compiler's Notes. — Section 2 of S.L. 2000, ch. 63 provided that this chapter would be null and void after March 31, 2001, unless the Idaho department of agriculture negotiated an acceptable memorandum of under-

standing with the EPA and others to carry out that act. That memorandum of understanding was reached and signed in November 2000. Consequently this chapter did not become null and void after March 31, 2001.

JUDICIAL DECISIONS

Disclosure.

Two nutrition management plans (NMP) of certain feedlots were subject to disclosure because they were public records that were not exempt; however, two other NMPs that

were filed via a state computer system were not subject to disclosure because they were exempt. *Idaho Conservation League, Inc. v. Idaho State Dep't of Agric.*, 143 Idaho 366, 146 P.3d 632 (2006).

22-4907. Inspections. — (1) The director or his designee in the division of animal industries is authorized to enter and inspect any beef cattle animal feeding operation and have access to or copy any facility records deemed necessary to ensure compliance with this chapter and the federal clean water act. The director shall comply with the biosecurity protocol of the operation so long as the protocol does not inhibit reasonable access to:

- (a) Enter and inspect at reasonable times the premises or land application site(s) of a beef cattle animal feeding operation;
- (b) Review and/or copy, at reasonable times, any records that must be kept under conditions of this chapter;
- (c) Sample or monitor at reasonable times, substances or parameters directly related to compliance with an NPDES permit or this chapter.

(2) All inspections and investigations conducted under the authority of this chapter shall be performed in conformity with section 17, article I of the constitution of the state of Idaho. The state shall not, under the authority granted by this chapter, conduct warrantless searches of private property in the absence of either consent from the property owner or other authorized person. [I.C., § 22-4907, as added by 2000, ch. 63, § 1, p. 138; am. 2004, ch. 187, § 5, p. 578.]

STATUTORY NOTES

Federal References. — The federal clean water act, referred to in the introductory paragraph in subsection (1), is codified as 33 U.S.C.S. § 1251 et seq.

Compiler's Notes. — Section 2 of S.L. 2000, ch. 63 provided that this chapter would be null and void after March 31, 2001, unless

the Idaho department of agriculture negotiated an acceptable memorandum of understanding with the EPA and others to carry out that act. That memorandum of understanding was reached and signed in November 2000. Consequently this chapter did not become null and void after March 31, 2001.

22-4908. Discharges. — No animal feeding operation shall cause an unauthorized discharge. Noncompliance with the provisions of this act or unauthorized discharges may subject a facility to enforcement as provided in this act. [I.C., § 22-4908, as added by 2000, ch. 63, § 1, p. 138.]

STATUTORY NOTES

Compiler's Notes. — The term "this act" means S.L. 2000, ch. 63, which is codified as §§ 24-4901 to 22-4910.

Section 2 of S.L. 2000, ch. 63 provided that this chapter would be null and void after March 31, 2001, unless the Idaho department of agriculture negotiated an acceptable mem-

orandum of understanding with the EPA and others to carry out that act. That memorandum of understanding was reached and signed in November 2000. Consequently this chapter did not become null and void after March 31, 2001.

22-4909. Enforcement. — (1) Informal administrative resolution of noncompliance. When the director identifies items of noncompliance at a beef cattle animal feeding operation, the deficiencies will be noted and appropriate corrective actions will be identified and scheduled informally. When corrective actions cannot be commenced within thirty (30) days and completed within a reasonable time, the director may negotiate a compliance order as specified in subsection (2)(b) of this section.

(2)(a) Administrative enforcement. Any beef cattle animal feeding operation not complying with the provisions of this act may be assessed a civil penalty by the director or his duly authorized agent in an administrative enforcement action by the issuance of a notice of noncompliance. The notice of noncompliance shall identify the alleged violation with specificity, shall specify each provision of the act or permit which has been violated, and shall state the amount of any civil penalty claimed for each violation and identify appropriate corrective action.

(b) The notice of noncompliance shall inform the person to whom it is directed of an opportunity to confer with the director or the director's designee in a compliance conference concerning the alleged violation. A compliance schedule must be requested within fifteen (15) days of receipt of the notice of noncompliance. The compliance conference shall provide an opportunity for the recipient of a notice of noncompliance to explain the circumstances of the alleged violation and, where appropriate, to present a proposal for remedying damage caused by the alleged violation and assuring future compliance. If the recipient and the director agree on a plan to remedy damage caused by the alleged noncompliance and to assure future compliance, they may enter into a compliance order formalizing their agreement. The compliance order may include a schedule to correct deficiencies and a provision providing for payment of any agreed civil penalty.

(c) A compliance order shall be effective immediately upon signing by both parties and shall preclude any civil enforcement action for the same alleged noncompliance. If a party does not comply with the terms of the compliance order, the director may seek and obtain, in any appropriate district court, specific performance of the compliance order and such other relief as authorized in this act.

(d) If the parties cannot reach agreement on a compliance order within sixty (60) days after the receipt of the notice of noncompliance, or if the recipient does not timely request a compliance conference under this section, the director may commence and prosecute a civil enforcement action in district court, in accordance with subsection (3) of this section.

(3) Civil enforcement. The director may initiate a civil enforcement action through the attorney general. Civil enforcement actions shall be commenced and prosecuted in the district court in and for the county in which the alleged violation occurred, and may be brought against any person who is alleged to have violated any provision of this act or any permit or order which has become effective pursuant to this act. Such action may be brought to compel compliance with any provision of this act or with any permit or order promulgated hereunder and for any relief or remedies authorized in

this act. No civil or administrative proceeding may be brought to recover for a violation of any provision of this act or a violation of any permit or order issued pursuant to this act, more than two (2) years after the director had knowledge or ought reasonably to have had knowledge of the violation.

(4) Civil penalty. Any person determined in a civil enforcement action to have violated any provision of this act or any permit or order promulgated pursuant to this act shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) per violation or one thousand dollars (\$1,000) for each day of a continuing violation. The method of recovery of said penalty shall be by a civil enforcement action in the district court in and for the county where the violation occurred. Moneys collected for violations of this section or rules promulgated thereunder shall be deposited in the state treasury and credited to the state school building fund. The imposition or computation of monetary penalties shall take into account the seriousness of the violation, good faith efforts to comply with the law, the economic impact of the penalty on the violator, the economic benefit, if any, of the violation and such other matters as justice requires. [I.C., § 22-4909, as added by 2000, ch. 63, § 1, p. 138.]

STATUTORY NOTES

Compiler's Notes. — The term "this act" means S.L. 2000, ch. 63, which is codified as §§ 22-4901 to 22-4910.

Section 2 of S.L. 2000, ch. 63 provided that this chapter would be null and void after March 31, 2001, unless the Idaho department of agriculture negotiated an acceptable mem-

orandum of understanding with the EPA and others to carry out that act. That memorandum of understanding was reached and signed in November 2000. Consequently this chapter did not become null and void after March 31, 2001.

22-4909A. Effect of federal environmental protection agency enforcement action. — In any case in which the United States environmental protection agency initiates an enforcement action regarding an alleged noncompliance at a beef cattle animal feeding operation, any pending administrative or civil enforcement action initiated by the director regarding the same alleged noncompliance shall be deemed void. If a compliance order addressing the alleged noncompliance has already been issued by the director, that order shall remain in full force and effect. [I.C., § 22-4909A, as added by 2009, ch. 46, § 1, p. 127.]

22-4910. Safe harbor. — All beef cattle animal feeding operations operating in compliance with this act and approved best management practices shall not be subject to state enforcement action due to violations of state water quality standards or state ground water quality standards except in the event of imminent and substantial danger as provided in chapter 1, title 39, Idaho Code. However, the department shall evaluate and modify such best management practices as necessary. [I.C., § 22-4910, as added by 2000, ch. 63, § 1, p. 138.]

STATUTORY NOTES

Compiler's Notes. — The term "this act" means S.L. 2000, ch. 63, which is codified as §§ 22-4901 to 22-4910.

Section 2 of S.L. 2000, ch. 63 provided that this chapter would be null and void after March 31, 2001, unless the Idaho department of agriculture negotiated an acceptable mem-

orandum of understanding with the EPA and others to carry out that act. That memorandum of understanding was reached and signed in November 2000. Consequently this chapter did not become null and void after March 31, 2001.

CHAPTER 50

CROP PRODUCT DESTRUCTION

SECTION.

22-5001. Destruction of agricultural or horticultural crop product — Damages.

22-5001. Destruction of agricultural or horticultural crop product — Damages. — (1) Any person or entity who willfully and knowingly damages or destroys any agricultural or horticultural crop product that is grown for personal or commercial purposes and that is also grown for testing or research in the context of a product development program in conjunction or coordination with a private research facility or a university or any federal, state, or local government agency, shall be liable for twice the value of the crop damaged or destroyed, together with attorney's fees and costs.

(2) In awarding damages under this section, the courts shall consider the market value of the crop prior to damage or destruction, and production, research, testing, replacement and crop development costs directly related to the crop that has been damaged or destroyed as part of the value of the crop.

(3) Damages available under this section shall be limited to twice the market value of the crop prior to damage or destruction plus twice the actual damages involving production, research, testing, replacement and crop development costs directly related to the crop that has been damaged or destroyed. [I.C., § 22-5001, as added by 2001, ch. 324, § 1, p. 1139.]

CHAPTER 51

SEED INDEMNITY FUND LAW

SECTION.

22-5101. Short title of act.
 22-5102. Definitions.
 22-5103. Licenses.
 22-5104. Bonds — Irrevocable letters of credit — Certificates of deposit — Single bond.
 22-5105. Amount of bond — Notice of cancellation.
 22-5106. Action by producer injured.
 22-5107. Fees.
 22-5108. Receipts — Scale weight tickets.

SECTION.

22-5109. Maintenance of records — Examination of records — Authorization to copy.
 22-5110. Violations — Penalties — Discretion of director to handle administratively.
 22-5111. Suspension or revocation of license.
 22-5112. Duty to prosecute.
 22-5113. Notice of noncompliance — Requirements — Failure to comply — Remedies of department.

SECTION.

- 22-5114. Insurance — Cancellation procedure — Suspension of license — Self-insurance.
- 22-5115. License reissuance following revocation.
- 22-5116. Department's authority.
- 22-5117. License denial.
- 22-5118. Payment with insufficient funds a violation.
- 22-5119. Confidential and protected records.
- 22-5120. Seed indemnity fund.
- 22-5121. Assessments.
- 22-5122. Collection and remittance of assessments — Principal amount held in trust — Interest earned — Failure to collect or remit assessments constitutes

SECTION.

- a violation — Interest and penalties for unpaid assessments.
- 22-5123. Funding and limits of fund.
- 22-5124. Advisory committee.
- 22-5125. Proof of claims — Procedure — Hearing.
- 22-5126. Failure to file — Loss of claim on fund.
- 22-5127. Minimum balance for claims — Termination of liability.
- 22-5128. Payment from fund — Debt of seed buyer or surety — Reimbursement — Accrual of cause of action.
- 22-5129. Rules.

22-5101. Short title of act. — This act shall be known as the “Seed Indemnity Fund Law.” [I.C., § 22-5101, as added by 2002, ch. 256, § 1, p. 736.]

STATUTORY NOTES

Compiler's Notes. — Chapters 256 and 365 of S.L. 2002 each purported to enact a new chapter 51 in title 22. Accordingly, ch. 256 was codified as title 22, chapter 51 (§§ 22-5101 to 22-5129) and ch. 365 was codified as title 22, chapter 52 (§§ 22-5201 to 22-5206). The enactment by ch. 365 was sub-

sequently amended and permanently redesignated as §§ 22-5201 to 22-5206 by S.L. 2003, ch. 16.

“This act,” referred to in this section means, S.L. 2002, ch. 256, which is compiled as §§ 22-5101 to 22-5129.

22-5102. Definitions. — As used in this chapter:

(1) “Contract” means an agreement which may include, but is not limited to, those contracts commonly referred to as production, credit sale, bailment, deferred payment, deferred or price later contracts.

(2) “Delivery voucher” means a form, other than a receipt or scale weight ticket, authorized by rules of the department evidencing delivery of a producer's seed crop to a seed buyer.

(3) “Department” means the Idaho state department of agriculture.

(4) “Director” means the director of the Idaho state department of agriculture.

(5) “Failure” means the date that one (1) or more of the following events occurred, as determined by the director:

(a) An inability to financially satisfy producers;

(b) A declaration of insolvency;

(c) A revocation of license and the leaving of an outstanding indebtedness to a producer;

(d) A failure to redeliver any seed crop stored for withdrawal or to pay producers for seed crop pursuant to the terms of an agreement; or

(e) A denial of the application for a license renewal.

(6) “Person” means any individual, firm, association, corporation, partnership or limited liability company.

(7) “Producer” means the owner, tenant or operator of land in this state who has an interest in the proceeds from the sale of seed crops grown on that same land. Producer does not include growers of seed crop who deposit their seed crop in a seed facility in which they have a financial or management interest, except members of a cooperative marketing association qualified under chapter 26, title 22, Idaho Code.

(8) “Production summary” means records that include, but are not limited to, the kind and type of seed crop, producer name and address, location and number of acres, clean seed per acre, value per pound and, when applicable, the contract number and lot identity.

(9) “Receipt” means a warehouse receipt.

(10) “Scale weight ticket” means a load slip, other than a receipt, given to a producer by a seed buyer, for transfer of the seed crop to the seed buyer. Each scale weight ticket shall be sequentially numbered, shall be recorded in triplicate and shall set forth the following:

- (a) Name and address of seed buyer;
- (b) Date of weighing;
- (c) Producer of seed crop weighed;
- (d) Kind of seed crop weighed;
- (e) Gross delivery weight;
- (f) Tare;
- (g) Net delivery weight; and
- (h) Full signature of weigher or name of supervisor of scale.

(11) “Seed buyer” means any person having a commercial operation, its agents and employees, together with its elevators, mills, buildings, or other structures who owes or has any financial obligation to the producer for seed crop grown by that producer and transferred to the seed buyer.

(12) “Seed crops” means any seed crop regulated by chapter 4, title 22, Idaho Code.

(13) “Seed facility” means:

- (a) That portion of the commercial operation of a seed buyer where seed crop transferred to it from an unpaid producer is stored; or
- (b) Where seed crop is stored for withdrawal.

(14) “Stored for withdrawal” means the deposit of seed crop with a seed facility by the producer for the subsequent withdrawal by that producer of the same seed crop or similar seed crop, as agreed to by the parties.

(15) “Transfer” means, unless otherwise defined by the parties in writing, the event when a producer or his agent delivers seed crop to the seed buyer who then gives the producer or his agent a scale weight ticket, receipt, or other written evidence of transfer.

(16) “Written evidence of transfer” means:

- (a) A delivery voucher;
- (b) A receipt; or
- (c) A scale weight ticket. [I.C., § 22-5102, as added by 2002, ch. 256, § 1, p. 736.]

22-5103. Licenses. — (1) Prior to beginning operation, a person intending to operate as a seed buyer shall first procure a license from the

department. Each license issued pursuant to this chapter, shall be issued for a period of one (1) year and the license or legible copy thereof shall be prominently displayed in each place of business.

(2) A seed facility endorsement showing the location of each seed facility in Idaho shall be attached to the seed buyer's license.

(3) The department is authorized to issue or renew a seed buyer license in accordance with this chapter, and the rules promulgated by the department providing [provided] each applicant meets the following conditions:

(a) Pay an application fee of up to five hundred dollars (\$500) pursuant to criteria established by rule, with the exception of those persons holding a license issued pursuant to chapter 4, title 22, Idaho Code;

(b) Submit a completed application form provided by the department, with required exhibits. The application shall include:

(i) The name of the applicant;

(ii) The names of the officers and directors if the applicant is a corporation or association;

(iii) The names of the partners if the applicant is a partnership or a limited liability company;

(iv) The location of the principal place of business;

(v) Information relating to any judgment against the applicants; and

(vi) Any other reasonable information the department finds necessary to carry out the provisions and purposes of this chapter.

(c) Provide a sufficient and valid bond as required by this chapter;

(d) Provide a current, sufficient policy of insurance covering losses as required by this chapter;

(e) Provide the location of its seed facilities in Idaho;

(f) Provide a written schedule of conditioning, bagging and testing charges; and

(g) Have on file a test report pursuant to sections 71-113 and 71-117, Idaho Code, from the Idaho state department of agriculture bureau of weights and measures showing approved status for any scales used for weighing received seed crops and any scales used for weighing clean weight of seed crops.

(4) All fees collected, pursuant to this chapter, for license application and renewal shall be deposited in the seed indemnity fund.

(5) All materials required for renewal of a license shall be received by the department prior to the expiration date of the current license. A license which has expired may be reinstated by the department upon receipt of all necessary licensing materials required by the provisions of this chapter and a reinstatement fee in an amount up to one thousand dollars (\$1,000) pursuant to criteria established by rule, providing that this material is filed within thirty (30) days from the date of expiration of the current license.

(6) A delivery of seed crop between producers, none of whom are seed buyers, shall be exempt from the provisions of this chapter. [I.C., § 22-5103, as added by 2002, ch. 256, § 1, p. 736.]

STATUTORY NOTES

Cross References. — Seed indemnity fund, § 22-5120. tion in the introductory paragraph in subsection (3) was added by the compiler.

Compiler's Notes. — The bracketed inser-

22-5104. Bonds — Irrevocable letters of credit — Certificates of deposit — Single bond. — Every person applying for a license shall execute and file with the department a good and sufficient bond issued by an insurer authorized to transact such insurance in this state. The bond shall be in favor of the seed indemnity fund to secure the faithful performance of the applicant's obligations under this chapter, and of such additional unpaid obligations assumed under agreements with producers of seed crops transferred to or deposited with the applicant. Said bond shall be in such form and amount, shall have such surety or sureties, and shall contain such terms and conditions as the department may prescribe to carry out the purposes of this chapter. Whenever the department determines that a previously approved bond is insufficient, it may require an additional bond or bonds conforming with the requirements of this chapter. Unless the additional bond is given within the time fixed by a written demand therefor, the license may be suspended or revoked.

At the discretion of the director, any person required to submit a bond to the department may give to the department an irrevocable letter of credit or certificate of deposit payable to the seed indemnity fund in lieu of the bond required herein. A certificate of deposit shall be submitted with an audited or reviewed financial statement prepared in accordance with the rules of the department by an independent Idaho certified public accountant or Idaho licensed public accountant. The principal amount of the letter of credit or certificate of deposit shall be the same as that required for a surety bond pursuant to this chapter. The letter of credit or certificate of deposit shall remain on file with the department until it is released, canceled or discharged by the director or until the director is notified ninety (90) days in advance, by registered or certified mail, return receipt requested, that the letter of credit or certificate of deposit is renewed, canceled or amended. Failure to notify the director may result in the suspension or revocation of the seed buyer license. The provisions of this chapter that apply to a bond apply to each letter of credit or certificate of deposit given in lieu of such bond. Under the provisions of this chapter, an irrevocable letter of credit or certificate of deposit shall not be accepted unless it is issued by a national bank or federal thrift institution in Idaho or by a state-chartered bank or thrift institution authorized to conduct business in Idaho and insured by the federal deposit insurance corporation.

If a seed buyer is also licensed pursuant to either chapter 2 or 5, title 69, Idaho Code, that seed buyer may obtain a single bond, certificate of deposit or irrevocable letter of credit as surety for both chapter 51, title 22, Idaho Code, and chapter 2 or 5, title 69, Idaho Code. The bond, certificate of deposit or irrevocable letter of credit shall be made out in favor of the commodity indemnity fund and the seed indemnity fund. In the event a seed buyer fails as defined in section 22-5102(5), Idaho Code, and a single bond, certificate of

deposit or irrevocable letter of credit is written in favor of the commodity indemnity fund and seed indemnity fund, the proceeds of the bond, certificate of deposit or irrevocable letter of credit will be allocated based on the dollar amount of the verified claims approved pursuant to chapter 51, title 22, Idaho Code, and chapter 2, title 69, Idaho Code. [I.C., § 22-5104, as added by 2002, ch. 256, § 1, p. 736; am. 2003, ch. 151, § 1, p. 434.]

STATUTORY NOTES

Cross References. — Commodity indemnity fund, § 69-256.
Seed indemnity fund, § 22-5120.

Effective Dates. — Section 5 of S.L. 2003, ch. 151 declared an emergency. Approved March 27, 2003.

22-5105. Amount of bond — Notice of cancellation. — The amount of bond to be furnished for each seed buyer will be fixed at whichever of the following amounts is greater:

- (1) The combined total seed buyer indebtedness paid and owed to producers for seed crop stored for withdrawal or transferred during the previous license year; or
- (2) The indebtedness owed and estimated to be owed to producers for seed crop for the current license year.

Subsequent to determining whichever of the preceding amounts is greater, and based on that amount, the amount of bond shall be calculated as follows:

Gross Dollars:	Amount of Bond:
\$0 - \$450,000	\$20,000 bond or 6% of the gross dollars, whichever is less
\$450,001 - \$1,000,000	\$40,000 bond
\$1,000,001 - \$8,000,000	\$100,000 bond
Over \$8,000,000	\$500,000 bond

In any case, the amount of the bond shall not be more than five hundred thousand dollars (\$500,000). This bond shall run concurrently with the seed buyer's license. A ninety (90) day written notice, by registered or certified mail, return receipt requested, shall be given to the director by the bonding company before it may amend or cancel any bond. [I.C., § 22-5105, as added by 2002, ch. 256, § 1, p. 736; am. 2003, ch. 151, § 2, p. 434.]

STATUTORY NOTES

Effective Dates. — Section 5 of S.L. 2003, ch. 151 declared an emergency. Approved March 27, 2003.

22-5106. Action by producer injured. — Any producer injured by the breach of any financial obligation for which a bond, irrevocable letter of credit or certificate of deposit is written under this chapter, must petition the director to make demand upon the seed buyer, the certificate of deposit, irrevocable letter of credit, or on the bond to enforce payment of claims. [I.C., § 22-5106, as added by 2002, ch. 256, § 1, p. 736; am. 2003, ch. 151, § 3, p. 434.]

STATUTORY NOTES

Effective Dates. — Section 5 of S.L. 2003, ch. 151 declared an emergency. Approved March 27, 2003.

22-5107. Fees. — (1) The department shall assess and collect a fee of one hundred dollars (\$100) for each inspection of a licensee, which is done for the purpose of amending a seed buyer license.

(2) The department may assess and collect a fee of two hundred fifty dollars (\$250) per day or fraction thereof for maintaining each employee of the department at a seed buyer's location to oversee the correction of a violation of the provisions of this chapter or department rules. [I.C., § 22-5107, as added by 2002, ch. 256, § 1, p. 736.]

22-5108. Receipts — Scale weight tickets. — Warehouse receipts or scale weight tickets shall be issued by the seed buyer to the producer:

(1) At the time of deposit for storage for withdrawal of the seed crop; or

(2) At the time of transfer of the seed crop. [I.C., § 22-5108, as added by 2002, ch. 256, § 1, p. 736.]

22-5109. Maintenance of records — Examination of records — Authorization to copy. — The seed buyer shall maintain current and complete records at all times with respect to all seed crops handled, deposited, shipped or merchandised by it, including seed crops owned by it. Such records shall include, but are not limited to, records showing the total quantity of each kind and class of seed crop received and loaded out and the amount remaining on deposit at the close of each business day.

Records required by this section shall be legible and kept in a place of safety in this state for a period of five (5) years. If a person operates at more than one (1) location, records of each location's transactions must be identifiable.

The department is authorized to examine records to confirm the proper collection and remittance of seed indemnity fund assessments and payments. The records subject to examination shall include, but are not limited to, receipts, scale weight tickets, conditioning records, production summaries, and payments to producers. The department is authorized to make copies of any documents or records relevant to compliance with the provisions of this chapter. [I.C., § 22-5109, as added by 2002, ch. 256, § 1, p. 736; am. 2003, ch. 151, § 4, p. 434.]

STATUTORY NOTES

Effective Dates. — Section 5 of S.L. 2003, ch. 151 declared an emergency. Approved March 27, 2003.

22-5110. Violations — Penalties — Discretion of director to handle administratively. — (1) Any person who violates any provision of this chapter or the rules promulgated hereunder, or who shall impede, obstruct,

hinder or otherwise prevent or attempt to prevent the director or his duly authorized representative in the performance of his duty in connection with the provisions of this chapter shall be guilty of a misdemeanor and be punished by imprisonment in a county jail not to exceed six (6) months, or by a fine of not more than one thousand dollars (\$1,000), or by both.

(2) Any person operating as a seed buyer without a license or in any way representing, by actions or words, that they are so licensed when they are not, or any person who shall misrepresent, forge, alter, counterfeit or falsely represent a license as required by the provisions of this chapter shall be guilty of a felony and punished by imprisonment in the state prison for not more than ten (10) years, or by a fine of not more than ten thousand dollars (\$10,000), or by both.

(3) Any person who shall issue, utter, or aid in the issuance or utterance or attempt to issue or utter a false or fraudulent receipt or scale weight ticket for any seed crop shall be guilty of a felony and punished by imprisonment in the state prison for not more than ten (10) years, or by a fine of not more than ten thousand dollars (\$10,000), or by both.

(4) Any person violating any provision of this chapter, or rules promulgated under this chapter, may be assessed a civil penalty by the department equal to the loss for each offense or five hundred dollars (\$500) a day for continuing violations. Persons against whom civil penalties are assessed shall be liable for the department's reasonable attorney's fees. Civil penalties may be assessed in conjunction with any other department administrative action. Moneys collected for violations of this section or rules promulgated under this section shall be deposited in the state treasury and credited to the seed indemnity fund.

(5) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when he believes that the public interest will be best served by suitable warnings or other administrative action. The director shall maintain a record of any administrative action involving a seed buyer with that seed buyer's license file. [I.C., § 22-5110, as added by 2002, ch. 256, § 1, p. 736.]

STATUTORY NOTES

Cross References. — Seed indemnity fund, § 22-5120.

22-5111. Suspension or revocation of license. — Pursuant to chapter 52, title 67, Idaho Code, the department may suspend or revoke any license issued under the provisions of this chapter, for any violation of, or failure to comply with, any provision of this chapter or chapter 7, title 28, Idaho Code. Pending investigation, the department, whenever it deems necessary, may suspend a license temporarily without a hearing. [I.C., § 22-5111, as added by 2002, ch. 256, § 1, p. 736; am. 2004, ch. 42, § 34, p. 77.]

22-5112. Duty to prosecute. — It shall be the duty of each prosecuting attorney to whom a violation is reported by the department, to cause

appropriate proceedings to be instituted and prosecuted without delay in a court of competent jurisdiction. [I.C., § 22-5112, as added by 2002, ch. 256, § 1, p. 736.]

22-5113. Notice of noncompliance — Requirements — Failure to comply — Remedies of department. — (1) Whenever a seed buyer is not meeting its obligations to producers, does not have the ability to pay producers, or refuses to submit records and papers to lawful inspection, the department shall give written notice to the seed buyer and direct the seed buyer to comply with all or any of the following requirements:

(a) The department may require additional security or the posting of a bond in an amount sufficient to satisfy any financial obligation to producers. The additional security may exceed the maximum bonding requirements of this chapter. Failure to timely post the additional bond or other security constitutes grounds for suspension or revocation of a license. The seed buyer may request a hearing regarding the decision to increase the amount of security required or the revocation or suspension of a license and may appeal such decisions pursuant to chapter 52, title 67, Idaho Code.

(b) Submit to such inspection as the department may deem necessary.

(2) If the seed buyer fails to comply with the terms of such notice within twenty-four (24) hours from the date of issuance of the notice, or within such further time as the department may allow, the department may petition the district court in the county where the seed buyer's principal place of business is located, as shown by the license application, for an order, according to section 22-106, Idaho Code.

(3) The department may give written notice of its action to the seed buyer's surety.

(4) The department may require an audited or reviewed financial statement.

(5) If at any time the department has evidence that the seed buyer is insolvent or is unable to satisfy the claims of producers, the department may petition the district court for the appointment of a receiver to operate or liquidate the business of the seed buyer.

(6) All court costs, attorney's fees, other professional fees, and necessary expenses incurred by the department in carrying out the provisions of this chapter may be recovered in any civil action brought by the department. [I.C., § 22-5113, as added by 2002, ch. 256, § 1, p. 736.]

22-5114. Insurance — Cancellation procedure — Suspension of license — Self-insurance. — (1) Every seed buyer who has a seed facility where seed crops are stored for withdrawal or transferred, shall maintain a "commercial property policy" of insurance, or its equivalent, issued by a company qualified to do business in the state in which the facility is located. The amount of insurance shall be sufficient to cover the property loss of the insured and such additional amounts that are: (a) greater than or equal to the total seed buyer indebtedness and the value of seed crop stored for withdrawal during the previous license year, or (b) estimated current

calendar year seed crop indebtedness to producers and the value of seed crop to be stored for withdrawal. The department rules shall enumerate the perils to be covered by the policy.

(2) The insurance company issuing the policy of insurance shall give ninety (90) days' advance notice to the department by registered or certified mail, return receipt requested, of cancellation of the policy.

(3) When the insurance policy of a seed buyer is canceled, the department shall immediately suspend the license of the seed buyer, and the suspension shall be in effect until satisfactory evidence exists that an effective policy of insurance complying with the requirements of this chapter has been submitted to the department.

(4) Seed buyers desiring to be self-insured shall apply to the department for authorization to self-insure. Application shall be made on forms prescribed by the department. [I.C., § 22-5114, as added by 2002, ch. 256, § 1, p. 736.]

22-5115. License reissuance following revocation. — A seed buyer license shall not be issued to any person whose license has been revoked within a period of three (3) years from the date of such revocation. Upon application for a license following revocation, the department shall hold a hearing within thirty (30) days from receipt of the application to determine if such license shall be issued. A change in a person's business name shall not absolve that person of a prior revocation of his seed buyer license. [I.C., § 22-5115, as added by 2002, ch. 256, § 1, p. 736.]

22-5116. Department's authority. — The department may, whenever it has reason to believe the provisions of this chapter have been violated or upon verified complaint of any person in writing, investigate the actions of any seed buyer, and if it finds cause to do so, file before the director, a complaint pursuant to chapter 52, title 67, Idaho Code, against the seed buyer requesting relief as authorized by this chapter. Notwithstanding any administrative processes, the director may apply to the appropriate court to enjoin the operations of the seed buyer. [I.C., § 22-5116, as added by 2002, ch. 256, § 1, p. 736.]

22-5117. License denial. — Any seed buyer against whose bond a claim has been ordered collected or has actually been collected shall not be licensed by the department for a period of three (3) years from the date of such order or collection. License denial may be waived if the person can show, to the satisfaction of the director, that full settlement of all claims against the bond have been made. Full settlement does not include seed indemnity fund settlements. A change in a person's business name shall not absolve any unsettled claim against that person's prior bond. [I.C., § 22-5117, as added by 2002, ch. 256, § 1, p. 736.]

22-5118. Payment with insufficient funds a violation. — Any seed buyer that violates the provisions of section 18-3106, Idaho Code, in making payment to the producer for any seed crop without sufficient funds in, or

credit with, such bank or other depository, also violates the provisions of this chapter. The word "credit" as used herein shall mean an arrangement or understanding with the bank or depository for such payment. [I.C., § 22-5118, as added by 2002, ch. 256, § 1, p. 736.]

22-5119. Confidential and protected records. — Records required by the department to validate the collection and remittance of assessments, including, but not limited to, production summaries, receiving records, conditioning reports, records relating to the payment of seed crops and seed indemnity fund reporting forms of a seed buyer, and financial records that may be required pursuant to section 22-5113(4), Idaho Code, shall be held confidential and will be protected as production records according to chapter 3, title 9, Idaho Code. These records shall not be subject to disclosure unless specifically authorized in writing by the licensee or as otherwise authorized pursuant to the provisions of chapter 3, title 9, Idaho Code. [I.C., § 22-5119, as added by 2002, ch. 256, § 1, p. 736.]

22-5120. Seed indemnity fund. — (1) There is hereby established, within the dedicated account, a fund to be known as the seed indemnity fund. The seed indemnity fund shall consist of assessments remitted pursuant to the provisions of this chapter and any interest or earnings on the fund balance.

(2) All assessments shall be paid to the department and shall be deposited in the seed indemnity fund. Assessments shall be paid solely by or on behalf of producers who transfer or deposit for storage a seed crop with a seed buyer. The state treasurer shall be the custodian of the seed indemnity fund. Disbursements shall be authorized by the director. No appropriation is required for disbursements from this fund.

(3) The seed indemnity fund shall be used exclusively for paying valid claims as authorized by this chapter and the necessary fees and expenses of the department in carrying out its responsibilities under this chapter. If necessary a portion of the fund may be used to defray the cost of reinsuring the fund at the discretion of the director. The state of Idaho shall not be liable for any claims presented against the fund. [I.C., § 22-5120, as added by 2002, ch. 256, § 1, p. 736.]

22-5121. Assessments. — Every producer shall pay an assessment for deposit in the seed indemnity fund according to the provisions of this chapter and rules promulgated by the department. A delivery of seed crop between producers, none of whom are seed buyers, is exempt from the collection and payment of assessments. Assessments shall be collected on the gross dollar amount, without any deduction, owed to, or paid, or to be paid, on behalf of the producer of the seed crop.

(1) The initial rate of the assessment shall be five-tenths of one percent (.5%). Changes in the rate will be established by criteria in the rules of the department. However, the producer's annual assessment shall not exceed five-tenths of one percent (.5%).

(2) If seed crop is stored for withdrawal, the assessment shall not exceed one-half cent (1/2¢) per pound, based on clean weight or, if not available,

estimated clean weight, per twelve (12) month period, payable at time of withdrawal. [I.C., § 22-5121, as added by 2002, ch. 256, § 1, p. 736.]

22-5122. Collection and remittance of assessments — Principal amount held in trust — Interest earned — Failure to collect or remit assessments constitutes a violation — Interest and penalties for unpaid assessments. — (1) The department shall promulgate rules to provide a procedure for the collection and remittance of the producer's assessments. Seed buyers who owe producers for the transfer of seed crop or have stored for withdrawal seed crop shall be responsible for the collection of the producer's assessments and the remittance of the assessments collected to the department.

(2) Seed buyers shall remit to the department assessments collected according to the provisions of this chapter. Payments will be made no later than the twentieth day of the month following the close of the calendar quarter on a form prescribed by the department. There are four (4) calendar quarters in the year, beginning on the first day of the months of January, April, July and October. Assessment reports shall be submitted even though assessments for the period have not been collected. Failure to do so will result in a penalty of one hundred dollars (\$100).

(3) The principal amount of assessments paid by, or deducted from, payments to producers by seed buyers, is held in trust for the seed indemnity fund immediately upon collection by seed buyers and is not property of the seed buyer.

(4) Interest earned on assessments prior to remittance to the department belongs to the seed buyer.

(5) If a seed buyer fails to collect or remit assessments as required it shall be considered a violation of the provisions of this chapter and shall subject the seed buyer to suspension or revocation of any license issued to the seed buyer under the provisions of this chapter.

(6) The department shall collect, on assessments unpaid within the time limits specified in this chapter, interest at the rate of ten percent (10%) per annum until the assessments are remitted together with a penalty of five percent (5%) each month on the unpaid assessment due until the maximum penalty of twenty-five percent (25%) is reached. [I.C., § 22-5122, as added by 2002, ch. 256, § 1, p. 736.]

STATUTORY NOTES

Cross References. — Seed indemnity fund, § 22-5120.

22-5123. Funding and limits of fund. — The maximum amount of the seed indemnity fund shall be maintained between ten million dollars (\$10,000,000) and twelve million dollars (\$12,000,000). [I.C., § 22-5123, as added by 2002, ch. 256, § 1, p. 736.]

STATUTORY NOTES

Cross References. — Seed indemnity fund, § 22-5120.

22-5124. Advisory committee. — (1) There is hereby created a seed indemnity fund advisory committee appointed by the director consisting of nine (9) members representing the diversity of the industry. Appointments shall be for up to three (3) year terms, each term ending on the same day of the same month as did the term preceding it. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed, shall hold office for the remainder of the predecessor's term.

(2) The committee shall be composed of seven (7) producers engaged in producing seed crops and two (2) seed buyers or seed buyer representatives.

(3) The terms of the appointees will be staggered and the initial appointments shall be three (3) producers and one (1) seed buyer for one (1) year terms, two (2) producers for two (2) year terms, and two (2) producers and one (1) seed buyer for three (3) year terms.

(4) The committee shall meet annually at such place and time as it determines and may meet as often as necessary to discharge the duties imposed upon it. Each committee member shall be compensated in accordance with section 59-509(o), Idaho Code, for travel and subsistence expense. The expenses of the committee and its operation shall be paid from the seed indemnity fund.

(5) The committee shall have the power and duty to advise the director concerning assessments, administration of the seed indemnity fund, and payment of claims from the fund. Every two (2) years the committee will review the maximum limits of the fund and give advice to the director. [I.C., § 22-5124, as added by 2002, ch. 256, § 1, p. 736; am. 2004, ch. 173, § 1, p. 551.]

STATUTORY NOTES

Cross References. — Seed indemnity fund, § 22-5120.

22-5125. Proof of claims — Procedure — Hearing. — After the director has declared a failure, the department shall process the claims of producers having paid or owing assessments who: (a) produce written evidence of transfer together with the amounts of their unpaid claims, and (b) have "stored for withdrawal" and provide written evidence of deposit.

(1) The department shall give written notice to and provide a reasonable time of not less than thirty (30) days and not more than sixty (60) days for producers to file their written verified claims, including any written evidence, with the department.

(2) The department shall investigate each claim and shall notify in writing each claimant, the seed buyer and the advisory committee of the department's determination as to the validity and amount of each claim. A claimant or seed buyer may request a hearing on the department's deter-

mination within twenty (20) days of receipt of written notification of the determination pursuant to chapter 52, title 67, Idaho Code. Upon determining the amount and validity of the claim, the director shall pay to the claimant an amount equal to ninety percent (90%) of the approved claim from the seed indemnity fund. Prior to any payment from the fund to a claimant, the claimant shall be required to subrogate and assign to the department his right to any recovery from any other source. The claimant shall be entitled to seek recovery of the remaining ten percent (10%), which was not assigned to the department. The procedure to determine the value of any claim will be established by rules.

(3) In the event of a shortage or inability to meet financial obligations, the department shall determine each producer's pro rata share of available seed crops and any deficiency shall be the claims of the producers. Each type of seed crop shall be treated separately for the purpose of determining shortages.

(4) The director shall not approve or pay any claim based on losses resulting from transactions with persons unlicensed pursuant to this chapter. The director shall not approve or pay any claim made on the seed indemnity fund if the claim is for the payment of interest, attorney's fees, ancillary costs, or punitive damages.

(5) If a producer's claim reveals that the assessment has not been paid or collected, and the claim is otherwise valid, the amount of the assessment shall be deducted from the claim payment. [I.C., § 22-5125, as added by 2002, ch. 256, § 1, p. 736.]

STATUTORY NOTES

Cross References. — Seed indemnity fund, § 22-5120.

22-5126. Failure to file — Loss of claim on fund. — No claim shall be paid from the fund to a producer who refuses or neglects to file a verified claim against a seed buyer:

(1) Within ninety (90) days from the date prescribed in the "notice of failure," or within the time limits of section 22-5125(1), Idaho Code, whichever is later; or

(2) If the claim is filed more than two (2) years from the date of transfer. [I.C., § 22-5126, as added by 2002, ch. 256, § 1, p. 736.]

22-5127. Minimum balance for claims — Termination of liability. — No claims of producers shall be paid when the balance in the seed indemnity fund is reduced to two hundred fifty thousand dollars (\$250,000). If the director cannot fully pay producers' claims without exceeding the minimum balance, he shall pay claims pro rata until the seed indemnity fund contains sufficient funds to pay claims in full. In no case shall the fund be liable for those claims not fully paid within three (3) years of submission of the claim. [I.C., § 22-5127, as added by 2002, ch. 256, § 1, p. 736.]

STATUTORY NOTES

Cross References. — Seed indemnity fund, § 22-5120.

22-5128. Payment from fund — Debt of seed buyer or surety — Reimbursement — Accrual of cause of action. — Amounts paid from the seed indemnity fund in satisfaction of any approved claims shall constitute a debt and obligation of the seed buyer against whom the claim was made and its surety. The director may bring suit on behalf of the seed indemnity fund and in the name of any claimant paid from the fund in district court of Ada county to recover from the seed buyer and its surety the amount of the payment made from the seed indemnity fund, together with costs and attorney’s fees incurred in maintaining the suit. In the event the department initiates an action against a seed buyer or surety, the department’s claim is deemed to accrue and relate back to the time that each producer who received a seed indemnity fund payment incurred a loss with the seed buyer. Any recovery for reimbursement of the fund shall bear interest at the statutory rate from the date of failure. [I.C., § 22-5128, as added by 2002, ch. 256, § 1, p. 736.]

STATUTORY NOTES

Cross References. — Seed indemnity fund, § 22-5120.

22-5129. Rules. — The department may, from time to time, make such rules as it deems necessary for the efficient execution of the provisions of this chapter. [I.C., § 22-5129, as added by 2002, ch. 256, § 1, p. 736.]

CHAPTER 52

CARBON SEQUESTRATION ADVISORY COMMITTEE

SECTION.	SECTION.
22-5201. Legislative intent.	sequestration advisory committee.
22-5202. Carbon sequestration advisory committee created — Membership — Compensation — Administrative assistance.	22-5204. Reports — Contents.
22-5203. Powers and duties of the carbon	22-5205. Powers and duties of the chairman.
	22-5206. Carbon sequestration assessment fund created.

22-5201. Legislative intent. — Increasing levels of carbon dioxide and other greenhouse gases in the atmosphere have led to growing interest in national and international forums for implementing measures to slow and reverse the buildup of such atmospheric constituents. Such measures may potentially include the establishment of systems of trading in credits for adoption of practices, technologies or other measures which decrease net emissions of carbon dioxide. Improved agricultural and timber production methods, soil and forest conservation practices and other methods of stewardship of soil and other land resources have great potential to increase carbon sequestration on agricultural and private forest lands and help offset

carbon dioxide emissions from other sectors of the economy. It is in the interest of agricultural producers, nonindustrial private forest landowners and the public in general that the soil conservation commission document and quantify carbon sequestration and greenhouse emissions reductions associated with agricultural and forestry practices, management systems and land uses occurring on cropland, forest land and rangeland in Idaho. It is the intent of the legislature that efforts to quantify and verify carbon sequestration on agricultural and forest lands will enhance the ability of the state's agricultural and nonindustrial private forest landowners to participate in any system of carbon sequestration marketing or trading. [I.C., § 22-5101 [22-5201], as added by 2002, ch. 365, § 1, p. 1029; am. and redesign. 2003, ch. 16, § 3, p. 48.]

STATUTORY NOTES

Compiler's Notes. — Chapters 256 and 365 of S.L. 2002 each purported to enact a new chapter 51 in title 22. Accordingly, ch. 256 was codified as title 22, chapter 51 (§§ 22-5101 to 22-5129) and ch. 365 was codified as title 22, chapter 52 (§§ 22-5201 to 22-5206)]. The enactment by ch. 365 was subse-

quently amended and permanently redesignated as §§ 22-5201 to 22-5206 by S.L. 2003, ch. 16.

Effective Dates. — Section 18 of S.L. 2003, ch. 16 declared an emergency. Approved February 12, 2003.

22-5202. Carbon sequestration advisory committee created — Membership — Compensation — Administrative assistance. —

(1) The carbon sequestration advisory committee is hereby created. The committee shall consist of the following nineteen (19) members, to be appointed by and serve at the pleasure of the governor:

- (a) The chairman of the soil conservation commission or his designee;
- (b) The director of the department of agriculture or his designee;
- (c) The director of the department of environmental quality or his designee;
- (d) The director of the department of lands or his designee;
- (e) One (1) member representing the University of Idaho college of agriculture;
- (f) One (1) member representing an entity which generates electrical energy;
- (g) Two (2) members who are producers of field crops, at least one (1) of whom actively employs a minimum tillage management system in his farming operation;
- (h) Two (2) members who are producers of livestock, at least one (1) of whom is actively involved in implementing a rangeland improvement plan;
- (i) One (1) member with expertise in carbon sequestration marketing or trading;
- (j) One (1) member representing soil conservation districts, as defined in section 22-2717, Idaho Code;
- (k) One (1) member representing the biofuels industry;
- (l) One (1) member representing the transportation industry;
- (m) One (1) member representing an environmental protection or conservation organization;

- (n) One (1) member representing nonindustrial private forest landowners;
 - (o) One (1) member representing American Indian tribal interests;
 - (p) One (1) member whose expertise is geology; and
 - (q) One (1) member whose expertise is economics.
- (2) Members of the committee shall be compensated as provided in section 59-509(b), Idaho Code.
- (3) The soil conservation commission shall assist the committee with administrative support as reasonably requested by the committee. [I.C., § 22-5102 [22-5202], as added by 2002, ch. 365, § 1, p. 1029.; am. and redesign. 2003, ch. 16, § 4, p. 48; am. 2006, ch. 217, § 1, p. 652.]

STATUTORY NOTES

Cross References. — State soil conservation commission, § 22-2718.

Amendments. — The 2006 amendment, by ch. 217, in subsection (1), substituted “nineteen members” for “sixteen members”;

and added subsections (1)(o)-(q).

Effective Dates. — Section 18 of S.L. 2003, ch. 16 declared an emergency. Approved February 12, 2003.

22-5203. Powers and duties of the carbon sequestration advisory committee. — The carbon sequestration advisory committee may:

- (1) Advise and assist the chairman of the soil conservation commission in preparing the reports required by this chapter and in conducting the assessment pursuant to section 22-5205, Idaho Code;
- (2) Recommend policies or programs to enhance the ability of Idaho agricultural and nonindustrial private forest landowners to participate in systems of carbon trading. Such recommendations shall include potential policies or programs designed to optimize economic benefits to agricultural producers and nonindustrial private forest landowners participating in carbon trading transactions. Such policies or programs may include, but are not limited to, identifying existing or the potential of creating nonprofit organizations or other public or private entities capable of serving as assemblers of carbon credits or as intermediaries on behalf of producers in carbon trading systems;
- (3) Encourage the production of educational and advisory materials regarding carbon sequestration on agricultural and forest lands and participation in systems of carbon or greenhouse emissions trading;
- (4) Identify and recommend areas of research needed to better understand and quantify the processes of carbon sequestration on agricultural and forest lands; and
- (5) Review the carbon sequestration programs and policies of other states. [I.C., § 22-5103 [22-5203], as added by 2002, ch. 365, § 1, p. 1029; am. and redesign. 2003, ch. 16, § 5, p. 48.]

STATUTORY NOTES

Effective Dates. — Section 18 of S.L. 2003, ch. 16 declared an emergency. Approved February 12, 2003.

22-5204. Reports — Contents. — On or before February 1, 2003, the chairman of the soil conservation commission, in consultation with the carbon sequestration advisory committee, shall prepare a report to the legislature. The report shall include, but not be limited to:

(1) The potential for development of a system or systems of carbon emissions trading or markets for carbon sequestered on agricultural and forest land;

(2) Agricultural and forestry practices, management systems or land uses which increase stored soil carbon;

(3) Methods for measuring and modeling net carbon sequestration associated with various agricultural and forestry practices, management systems or land uses occurring on agricultural and forest lands and legislation, if any, to define and protect property rights in and attendant to carbon sequestration;

(4) Areas of scientific uncertainty with respect to quantifying and understanding carbon sequestration associated with agricultural and forestry activities; and

(5) Any recommendations of the carbon sequestration advisory committee developed pursuant to section 22-5203, Idaho Code. [I.C., § 22-5104 [22-5204], as added by 2002, ch. 365, § 1, p. 1029; am. and redesign. 2003, ch. 16, § 6, p. 48.]

STATUTORY NOTES

Effective Dates. — Section 18 of S.L. 2003, ch. 16 declared an emergency. Approved February 12, 2003.

22-5205. Powers and duties of the chairman. — (1) In consultation with the carbon sequestration advisory committee, the chairman of the soil conservation commission shall assess agricultural and private forest lands in Idaho for past carbon sequestration and future carbon sequestration potential. The assessment shall seek to quantify carbon sequestration associated with various agricultural and forestry practices, management systems and land uses occurring on agricultural and forest lands in this state. On or before March 1, 2003, the chairman shall publish a report of the findings. From time to time, the chairman may update the findings as advancements in understanding of the processes of carbon sequestration and new data become available.

(2) The assessment shall be conducted in a manner that shall provide a means for owners of agricultural and forest land to estimate past and future net carbon sequestration resulting from agricultural and forestry practices, conservation measures, management systems and land uses occurring on their property. The chairman of the soil conservation commission may contract and cooperate with the natural resources conservation service of the United States department of agriculture to conduct assessment activities provided for in this section.

(3) The soil conservation commission may apply for and accept grants, gifts or other sources of public and private funds to carry out the purposes

of this chapter. [I.C., § 22-5105 [22-5205], as added by 2002, ch. 365, § 1, p. 1029; am. and redesign. 2003, ch. 16, § 7, p. 48.]

STATUTORY NOTES

Cross References. — State soil conservation commission, § 22-2718. 2003, ch. 16 declared an emergency. Approved February 12, 2003.

Effective Dates. — Section 18 of S.L.

22-5206. Carbon sequestration assessment fund created. — There is hereby created and established in the state treasury a fund to be known as the “Carbon Sequestration Assessment Fund,” which shall consist of such funds, grants, donations or moneys from other sources. The fund shall be administered by the soil conservation commission in order to carry out the purposes of this chapter. Moneys in the fund may be expended pursuant to appropriation. Any interest earned on the investment of idle moneys in the fund shall be returned to the fund. [I.C., § 22-5106 [22-5206], as added by 2002, ch. 365, § 1, p. 1029; am. and redesign. 2003, ch. 16, § 8, p. 48.]

STATUTORY NOTES

Cross References. — State soil conservation commission, § 22-2718. 2003, ch. 16 declared an emergency. Approved February 12, 2003.

Effective Dates. — Section 18 of S.L.

TITLE 23

ALCOHOLIC BEVERAGES

CHAPTER.

1. INTERPRETATIVE AND GENERAL PROVISIONS OF IDAHO LIQUOR ACT, §§ 23-101 — 23-105.
2. STATE LIQUOR DIVISION, §§ 23-201 — 23-217.
3. LOCAL LIQUOR STORES AND DISTRIBUTING STATIONS, §§ 23-301 — 23-313.
4. LIQUOR FUND, §§ 23-401 — 23-409.
5. PERMITS AND LICENSES, §§ 23-501 — 23-519.
6. PENAL PROVISIONS, §§ 23-601 — 23-616.
7. LIQUOR NUISANCES, §§ 23-701 — 23-712.
8. ENFORCEMENT OF PENAL AND ABATEMENT PRO-

CHAPTER.

- VISIONS OF IDAHO LIQUOR ACT, §§ 23-801 — 23-808.
9. RETAIL SALE OF LIQUOR BY THE DRINK, §§ 23-901 — 23-957.
10. BEER, §§ 23-1001 — 23-1056.
11. DISTRIBUTORS AND SUPPLIERS OF BEER, §§ 23-1101 — 23-1113.
12. IDENTIFICATION CARDS. [REPEALED.]
13. COUNTY OPTION KITCHEN AND TABLE WINE ACT, §§ 23-1301 — 23-1338.
14. HOSPITALITY CABINETS, §§ 23-1401 — 23-1409.

CHAPTER 1

INTERPRETATIVE AND GENERAL PROVISIONS OF IDAHO LIQUOR ACT

SECTION.

- 23-101. Short title.
23-102. Purpose of act.
23-103. Prior offenses and rights not affected.

SECTION.

- 23-104. Separability.
23-105. Alcoholic liquor defined.

23-101. Short title. — This act may be cited as the “Idaho Liquor Act.” [1939, ch. 222, § 101, p. 465.]

STATUTORY NOTES

Cross References. — County option kitchen and table wine act, § 23-1301 et seq.

Power of legislature to regulate or prohibit manufacture, sale, keeping for sale, and transportation for sale of intoxicating liquors, Const., Art. III, § 26.

School children to be taught effects of alcohol, § 33-1605.

Compiler’s Notes. — The words “this act” refer to S.L. 1939, ch. 222, which is generally compiled as chapters 1 to 6, title 23, Idaho Code.

This chapter of Idaho Code comprised article 1 of the original 1939 Idaho Liquor Act and was headed “Interpretative and General Provisions.”

23-102. Purpose of act. — This act is passed in the exercise of the police power of the state. It is not designed to abridge the personal privilege of a responsible adult to consume alcoholic liquor as a beverage, except in cases of the abuse of that privilege to the detriment of others. The public interest requires that traffic in alcoholic liquor be regulated and controlled by the state, through the medium of a state liquor division vested with exclusive authority to import and sell such liquor, with certain exceptions, which are subject to its regulation. [1939, ch. 222, § 102, p. 465; am. 2009, ch. 23, § 2, p. 53.]

STATUTORY NOTES

Cross References. — Power to regulate or prohibit sale of intoxicating liquors, Const., Art. III, § 26.

Amendments. — The 2009 amendment, by ch. 23, substituted “state liquor division” for “state liquor dispensary” in the last sentence.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-101.

JUDICIAL DECISIONS

Constitutionality.

State receiving large financial benefits from liquor control statute was not in a position to question the constitutionality of the statute in

suit for services rendered to the control commission. *Albrethsen v. State*, 60 Idaho 715, 96 P.2d 437 (1939).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 14 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 44 et seq.

23-103. Prior offenses and rights not affected. — This act shall not impair or affect any act done, offense committed, or right accruing, secured, or acquired, or penalty, forfeiture or punishment incurred prior to its effective date [March 10, 1939], but the same may be enjoyed, asserted, enforced, prosecuted, or inflicted as fully and to the same extent as if this act had not been passed. [1939, ch. 222, § 103, p. 465.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-101.

The bracketed insertion was added by the compiler.

23-104. Separability. — Should any section, clause, sentence, or provision of this act, be held invalid for any reason, such holding or decree shall not be construed as affecting the validity of any of the remaining portions hereof, it being declared that the legislature would have adopted the remainder of this act, notwithstanding the invalidity of any such section, clause, sentence, or provision. [1939, ch. 222, § 104, p. 465.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-101.

1939, ch. 222 declared an emergency. Approved March 10, 1939.

Effective Dates. — Section 105 of S.L.

23-105. Alcoholic liquor defined. — "Alcoholic liquor," as the term is used in this act, includes:

(a) "Alcohol," meaning the product of distillation of any fermented liquor, rectified either once or oftener, whatever may be the origin thereof, or synthetic ethyl alcohol.

(b) "Spirits," meaning any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including, among other things, brandy, rum, whiskey, and gin.

(c) "Wine," meaning any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits (grapes, apples, etc.) or other agricultural products containing sugar (honey, milk, etc.).

(d) Any liquid or solid, patented or not, containing alcohol, spirits, or wine, and susceptible of being consumed by a human being, for beverage purposes, and containing more than 4 per cent of alcohol by weight. [1939, ch. 222, § 106, p. 465.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted. For words "this act", see Compiler's Notes, § 23-101.

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 3 et seq.

CHAPTER 2

STATE LIQUOR DIVISION

SECTION.

- 23-201. Director — Appointment and term.
- 23-202. Principal place of business.
- 23-203. Powers and duties.
- 23-204. Successor to property of former administrators.
- 23-205. Secretary — Appointment, term and duties.
- 23-206. Powers and duties of director as successor to Idaho liquor board.
- 23-207. Specific rules and regulations.
- 23-208. Director — Powers and duties.
- 23-209. Official bond of director.
- 23-210. [Obsolete.]

SECTION.

- 23-211. Personnel not to be interested in private liquor traffic.
- 23-212. Personnel disqualified from other office or business.
- 23-213. [Repealed.]
- 23-214. Officers and employees not personally liable.
- 23-215. Price lists to be furnished by sellers.
- 23-216. Attorney or agent of seller — Name and address to be furnished.
- 23-217. Surcharge added to price of alcoholic liquor and all other merchandise sold — Collection and remission by director.

23-201. Director — Appointment and term. — There shall be a state liquor division (in this act referred to as the "division"), in the office of the governor. The division shall be a division of the office of the governor for the purposes of chapter 24, title 67, Idaho Code, and the administrator of the division shall be known as the director of the state liquor division. The division shall be conducted by the director of the division. The director shall be appointed by the governor for a term of three (3) years, but may be removed by the governor at will. [1939, ch. 222, § 201, p. 465; am. 1941, ch. 10, § 1, p. 20; am. 1974, ch. 22, § 8, p. 592; am. 2009, ch. 23, § 3, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, throughout the section, substituted "division" for "dispensary" and "director" for "superintendent."

Compiler's Notes. — Sections 23-201 — 23-204 comprised article 2 of the Idaho Liquor Act, headed "State Liquor Dispensary." Sections 23-205 to 23-207 are the unrepealed portions of article 3 of the Idaho Liquor Act,

headed in the original act as "Idaho Liquor Board." Sections 23-208 and 23-209 are the unrepealed portions of article 4 of the Idaho Liquor Act, headed in the original act as "Manager." Sections 23-211, 23-212, and 23-214 are the unrepealed portions of article 5 of the Idaho Liquor Act, headed, "General Administrative Provisions." Sections 23-215 to 23-217 are separate enactments.

The words enclosed in parentheses so appeared in the law as enacted.

For words "this act", see Compiler's Notes, § 23-101.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Purpose of Act.

The purpose of S.L. 1935, ch. 103 (since repealed) and the end to be attained were the control of traffic in intoxicating liquor by the state and the making of profit to the state. *State v. Musser*, 67 Idaho 214, 176 P.2d 199 (1946).

It was not intended by the provisions of S.L. 1935, ch. 103 (since repealed) to seek to control the drinking of intoxicating liquor in public places in any municipality. *State v. Musser*, 67 Idaho 214, 176 P.2d 199 (1946).

RESEARCH REFERENCES

Am. Jur. — 48 Am. Jur. 2d, Intoxicating Liquors, § 17.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 285.

23-202. Principal place of business. — The principal place of business of the division shall be in Ada county. [1939, ch. 222, § 202, p. 465; am. 2001, ch. 183, § 6, p. 613; am. 2009, ch. 23, § 4, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, substituted "division" for "dispensary."

23-203. Powers and duties. — The division shall have the following general powers and duties:

(a) Regulation of Liquor Traffic. To permit, license, inspect, and regulate the manufacture, importation, transportation, storage, sale, and delivery of alcoholic liquor for purposes permitted by this act.

(b) Traffic in Liquor. To buy, import, transport, store, sell, and deliver alcoholic liquor.

(c) Operation of Liquor Stores. To establish, maintain, and discontinue warehouses, state liquor stores and distribution stations, and in the operation thereof to buy, import, transport, store, sell and deliver such other nonalcohol merchandise as may be reasonably related to its sale of alcoholic liquor.

(d) Acquisition of Real Estate. To acquire, buy, and lease real estate, and to improve and equip the same for the conduct of its business.

(e) Acquisition of Personal Property. To acquire, buy, and lease personal property necessary and convenient for the conduct of its business.

(f) Making Reports. To report to the governor annually, and at such other times as he may require, concerning the condition, management, and financial transactions of the division.

(g) General Powers. To do all things necessary and incidental to its powers and duties under this act.

The division shall so exercise its powers as to curtail the intemperate use of alcoholic beverages. It shall not attempt to stimulate the normal demands

of temperate consumers thereof, irrespective of the effect on the revenue derived by the state from the resale of intoxicating liquor. [1939, ch. 222, § 203, p. 465; am. 2006, ch. 18, § 1, p. 68; am. 2009, ch. 23, § 5, p. 53.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 18, added “and in the operation thereof to buy, import, transport, store, sell and deliver such other nonalcohol merchandise as may be reasonably related to its sale of alcoholic liquor” at the end of subsection (c).

The 2009 amendment, by ch. 23, substituted “division” for “dispensary” throughout the section.

Compiler’s Notes. — For words “this act”, see Compiler’s Notes, § 23-102.

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 87 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 44 et seq.

23-204. Successor to property of former administrators. — The division shall succeed to the property and records of the Idaho Liquor Control Commission created by chapter 103 of the 1935 Session Laws, and the Idaho Liquor Board created by Senate Bill No. 26 of the Twenty-fifth Session, approved January 26, 1939. [1939, ch. 222, § 204, p. 465; am. 2009, ch. 23, § 6, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, substituted “division” for “dispensary.”

Compiler’s Notes. — S.L. 1935, ch. 103, which created the Idaho Liquor Control Com-

mission, was repealed by S.L. 1939, ch. 222, § 107. Senate Bill 26 of the 25th session, which created the Idaho Liquor Board, is S.L. 1939, ch. 14 and also was repealed by S.L. 1939, ch. 222, § 107.

23-205. Secretary — Appointment, term and duties. — The director of the division shall appoint a secretary, to serve at the pleasure of the director. The secretary shall keep the records of the division, and perform such other duties as the director may prescribe. [1939, ch. 222, § 305, p. 465; am. 1941, ch. 10, § 2, p. 20; am. 2009, ch. 23, § 7, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, throughout the section, substituted “director” for “superintendent” and “division”

for “Idaho liquor dispensary” or similar language.

23-206. Powers and duties of director as successor to Idaho liquor board. — The director of the division shall have the following general powers and duties. (a) Supervision: To exercise general supervision of the conduct and business of the division. (b) Rules and Regulations: To promulgate rules and regulations in the exercise of the governmental and proprietary powers and duties of the division. [1939, ch. 222, § 307, p. 465; am. 1941, ch. 10, § 3, p. 20; am. 2009, ch. 23, § 8, p. 53.]

STATUTORY NOTES

Cross References. — Duty to cooperate with department of law enforcement, § 23-805.

by ch. 23, throughout the section, substituted “director” for “superintendent” and “division” for “dispensary.”

Amendments. — The 2009 amendment,

23-207. Specific rules and regulations. — Without attempting or intending to limit the general powers of the director of the division contained in section 23-206, Idaho Code, such powers shall extend to and include the following:

(a) To prescribe the duties of the secretary, and to supervise his conduct while in the discharge of his duties.

(b) Subject to the provisions of chapter 53, title 67, Idaho Code, to prescribe the qualifications of and to select clerks, accountants, agents, vendors, inspectors, servants, legal counsel, and other personnel to conduct its business and perform its functions; to require that those holding positions of trust be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code; to fix the compensation of all appointees and employees, assign their duties, and to discharge them.

(c) To regulate the management, operation, bookkeeping, reporting, equipment, records, and merchandise of state liquor stores and distribution stations and warehouses.

(d) To regulate the importation, purchase, transportation, and storage of alcoholic liquor and the furnishing of alcoholic liquor to state liquor stores, distribution stations, and warehouses established under this act.

(e) To determine the classes, varieties, and brands of alcoholic liquors to be kept in state warehouses and for sale at state liquor stores and distribution stations.

(f) To determine the nature, form, and capacity of packages containing liquor kept or sold.

(g) To prescribe the kinds and character of official seals or labels to be attached to packages of liquor sold to a licensed premises. No official seals or labels shall be required to be attached to packages of liquor sold to the general public, at a liquor store or a distributing station, which is not a licensed premises through liquor stores or distributing stations.

(h) From time to time to fix the sale prices, which shall be uniform throughout the state, of the different classes, varieties, or brands of alcoholic liquor, and to issue and distribute price lists thereof.

(i) To prescribe, prepare, and furnish printed forms and information blanks necessary or convenient for administering this act, and printed copies of the regulations made thereunder. To contract for the printing thereof and of all necessary records and reports.

(j) To regulate the issuance, suspension and revocation of permits and licenses to purchase, manufacture and handle or traffic in alcoholic liquor.

(k) To prescribe the conditions and qualifications necessary for obtaining permits and licenses, and the conditions of use of privileges under them; and to provide for the inspection of the records and the conduct of use of permittees and licensees.

(l) To prescribe the kind, quality, and character of alcoholic liquors which may be purchased or sold under any and all licenses and permits, including the quantity which may be purchased or sold at any one (1) time or within any specified period of time. [1939, ch. 222, § 308, p. 465; am. 1941, ch. 10, § 4, p. 20; am. 1971, ch. 136, § 10, p. 522; am. 1974, ch. 22, § 9, p. 592; am. 2009, ch. 23, § 9, p. 53; am. 2009, ch. 282, § 1, p. 849.]

STATUTORY NOTES

Amendments. — This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 23, in the introductory language, substituted “director of the division” for “superintendent of the dispensary.”

The 2009 amendment, by ch. 282, in subsection (g), added “to a licensed premises” to the first sentence and added the last sentence.

Compiler’s Notes. — For words “this act”, see Compiler’s Notes, § 23-102.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.
Construction.

Constitutionality.

This section does not violate the provisions of Const., Art. III, § 26; it was founded upon the terms of said section, and in enacting this section the legislature was exercising the express power conferred on it by section 26. *Taylor v. State*, 62 Idaho 212, 109 P.2d 879 (1941).

Idaho Const., appear to have the meaning of the right to govern, regulate, dominate, restrain or subdue, without restraint, qualification, reserve, abatement or discrimination, and implies of necessity the power and authority to do all things necessary, convenient and proper to such complete domination. *Taylor v. State*, 62 Idaho 212, 109 P.2d 879 (1941).

Construction.

The words “full power and authority to control and regulate,” as used in art. III, § 26,

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 192 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 69 et seq.

23-208. Director — Powers and duties. — The director as the executive officer of the division, shall exercise all the powers and duties vested in the division. [1939, ch. 222, § 401, p. 465; am. 1941, ch. 10, § 5, p. 20; am. 2009, ch. 23, § 10, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, substituted “director” for “superintendent” in the section heading and in the text

and twice substituted “division” for “dispensary.”

23-209. Official bond of director. — The director shall be bonded to the state of Idaho in the time, form and manner as prescribed by chapter 8, title 59, Idaho Code. [1939, ch. 222, § 402, p. 465; am. 1941, ch. 10, § 6, p. 20; am. 1971, ch. 136, § 11, p. 522; am. 2009, ch. 23, § 11, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, “director” in the section heading and in the by ch. 23, substituted “superintendent” for text.

23-210. Salary of superintendent. [Obsolete.]

STATUTORY NOTES

Compiler’s Notes. — This section, comprising S.L. 1939, ch. 222, § 403; am. 1941, ch. 10, § 7, providing an annual salary of \$3,600 for the superintendent, is obsolete since the salary of the superintendent is now fixed by the appointing authority under § 59-508.

23-211. Personnel not to be interested in private liquor traffic. — Neither the director, the secretary, nor any other officer or employee of the division shall, directly or indirectly, individually, or as a member of a partnership or as a shareholder in a corporation, have any private interest whatsoever in the business of manufacturing, transporting, distributing, or selling of alcoholic liquor; nor shall he receive any kind of profit whatsoever, or have any interest whatsoever in the purchases or sale by the persons herein authorized to purchase and sell alcoholic liquor, except that such provisions shall not prevent any such person from purchasing and keeping in his possession for the personal use of himself, his family, or his guests, of any liquor which may be lawfully purchased. [1939, ch. 222, § 501, p. 465; am. 1941, ch. 10, § 8, p. 20; am. 2009, ch. 23, § 12, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, substituted “director” for “superintendent” and “division” for “dispensary.”

23-212. Personnel disqualified from other office or business. — No officer or employee of the division shall, while holding such office or position, hold any other office or position or engage in any occupation or business inconsistent or interfering with the duties of such employment. [1939, ch. 222, § 502, p. 465; am. 2009, ch. 23, § 13, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, substituted “division” for “dispensary.”

23-213. Personnel not to engage in politics. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — This section, which comprised 1939, ch. 222, § 503, p. 465, was repealed by S.L. 2007, ch. 17, § 1.

23-214. Officers and employees not personally liable. — Neither the director, secretary, nor any of the officers or employees of the division shall be liable for damages sustained by any person because of any act done in the performance of their respective duties under this act. [1939, ch. 222, § 504, p. 465; am. 1941, ch. 10, § 9, p. 20; am. 2009, ch. 23, § 14, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, substituted “director” for “superintendent” and “division” for “dispensary.”

Compiler’s Notes. — For words “this act”, see Compiler’s Notes, § 23-102.

23-215. Price lists to be furnished by sellers. — All sellers of liquors or wines to the division shall furnish to the director or other executive officer of said division, upon demand of such officer, a sworn statement showing the prices at which the same kind and grade of liquors or wines are currently sold to the official buying agencies of all states whose border touches the border of the state of Idaho; and it shall be the duty of the director or other executive officer of said division, to keep such listed prices on file in his office and to permit the examination of the same at all times during regular office hours by any person desiring to inspect the same. [1943, ch. 47, § 1, p. 93; am. 2009, ch. 23, § 15, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, throughout the section, substituted “division” for “state liquor dispensary” or sim-

ilar language and twice substituted “director” for “superintendent.”

23-216. Attorney or agent of seller — Name and address to be furnished. — Any firm or person interested in the sale of liquors or wines to the division shall file with said division the name and address of any attorney or agent employed by such firm or person in the state of Idaho, and designating the services to be performed by such attorney or agent, which information shall be filed in the office of the division and shall be available at all times during regular office hours to any person desiring to inspect the same. [1943, ch. 47, § 2, p. 93; am. 2009, ch. 23, § 16, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, throughout the section, substituted

“division” for “state liquor dispensary” or similar language.

23-217. Surcharge added to price of alcoholic liquor and all other merchandise sold — Collection and remission by director. — (1) The director of the division is hereby authorized and directed to include in the price of alcoholic liquor and all other merchandise sold in the division, and its branches, a surcharge equal to two percent (2%) of the current price per unit computed to the nearest multiple of five cents (5¢).

(2) After the price of the surcharge has been included, the director of the division is hereby authorized and directed to allow a discount of five percent

(5%) from the price of each order of alcoholic liquor and all other merchandise sold to any licensee, as defined in section 23-902(7), Idaho Code.

(3) The surcharge imposed pursuant to this section shall be collected and credited monthly to the drug court, mental health court and family court services fund, as set forth in section 1-1625, Idaho Code. [I.C., § 23-217, as added by 1959, ch. 166, § 1, p. 386; am. 1961, ch. 248, § 1, p. 411; am. 1963, ch. 428, § 1, p. 1107; am. 1971, ch. 3 (E.S.), § 1, p. 9; am. 1972, ch. 311, § 1, p. 772; am. 1973, ch. 290, § 1, p. 613; am. 1974, ch. 22, § 10, p. 592; am. 1974, ch. 213, § 1, p. 1558; am. 1976, ch. 317, § 1, p. 1086; am. 1982, ch. 255, § 1, p. 653; am. 1994, ch. 180, § 36, p. 420; am. 2003, ch. 291, § 1, p. 791; am. 2004, ch. 318, § 2, p. 892; am. 2005, ch. 360, § 3, p. 1144; am. 2006, ch. 18, § 2, p. 68; am. 2009, ch. 23, § 17, p. 53.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 18, substituted “alcoholic liquor and all other merchandise” for “goods” in the section’s heading and in subsection (2) and “goods hereafter” in subsection (1).

The 2009 amendment, by ch. 23, in the section heading and throughout the section, substituted “director” for “superintendent” and substituted “division” for “state liquor dispensary” or similar language.

Effective Dates. — Section 2 of S.L. 1959, ch. 166 provided said act should take effect on the first day of July, 1959.

Section 2 of S.L. 1963, ch. 428 declared an emergency. Approved March 29, 1963.

Section 3 of S.L. 1974, ch. 213 read: “Section 1 of this act shall be in full force and effect on and after July 1, 1974. An emergency

existing therefor, which emergency is hereby declared to exist, section 2 of this act shall be in full force and effect on and after its passage and approval.”

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 36 of S.L. 1994, ch. 180 became effective January 2, 1995.

Section 14 of S.L. 2004, ch. 318 declared an emergency retroactively to January 1, 2004 and approved March 24, 2004.

CHAPTER 3

LOCAL LIQUOR STORES AND DISTRIBUTING STATIONS

SECTION.

- 23-301. Liquor stores — Notice of intent to locate.
- 23-302. Distributing stations — Notice of intent to locate.
- 23-303. Proximity of school.
- 23-304. Qualifications of vendors and special distributors.
- 23-305. Compensation of vendors and special distributors.
- 23-306. General conduct and management.
- 23-307. Days when sales are prohibited.
- 23-308. County option Sunday liquor sales — Resolution of county commissioners — Local option county election.

SECTION.

- 23-308A. Form of local option county election ballot.
- 23-308B. Effect of local option county election.
- 23-308C. Subsequent local option county elections.
- 23-309. Sales.
- 23-310. Original package.
- 23-311. Containers.
- 23-312. Persons under twenty-one and intoxicated persons — Inhibited sales.
- 23-313. Liquor not to be consumed on premises.

23-301. Liquor stores — Notice of intent to locate. — (a) The division may establish and maintain liquor stores under the management of

a vendor in any city organized under general or special law. Before any store site or distributing station may be established within a city or unincorporated area that does not have a distributing station, the division shall have printed in the city's official newspaper, as defined in section 50-213, Idaho Code, a legal notice of the division's intent to establish a liquor store or distributing station in the city and that a public hearing will be held regarding the proposed liquor store if the requirements specified herein are satisfied. The legal notice shall contain the time, date and place of the hearing and the address where the liquor store or distributing station is proposed to be located, notice of the right to protest the location, the requirements necessary to be satisfied before a public hearing will be held, and shall be a twenty (20) days' notice as described in section 60-109, Idaho Code. If the lesser of twenty-five (25) people or ten percent (10%) of the eligible voters living in precincts, any part of which is located within a one thousand (1,000) foot radius surrounding of the proposed site, sign a petition which protests the proposed site of the liquor store or distributing station and present it to the director or his designated representative, a public hearing shall be held within one (1) week after the last legal notice has been published.

(b) If fifty percent (50%) or more of the eligible voters living in precincts, any part of which is located within a one thousand (1,000) foot radius surrounding the proposed site of the liquor store or distributing station, sign a petition which protests the proposed site of the liquor store or distributing station and present it to the director or his designated representative within five (5) business days after the public hearing, the division shall not place a liquor store or distributing station at the proposed site.

(c) The division may classify liquor stores according to the volume of their sales. [1939, ch. 222, § 601, p. 465; am. 1978, ch. 237, § 1, p. 506; am. 1980, ch. 68, § 1, p. 143; am. 1980, ch. 301, § 1, p. 778; am. 2009, ch. 23, § 18, p. 53.]

STATUTORY NOTES

Cross References. — Hours of sale for beer, § 23-1012.

Sale by the drink on Sundays and certain holidays prohibited, § 23-927.

Amendments. — This section was amended by two 1980 acts which appear to be compatible and have been compiled together.

The 1980 amendment by ch. 68, in the first sentence of subsection (a), deleted the word "a" preceding "liquor" and substituted "stores" for "store."

The 1980 amendment by ch. 301, in the first sentence of subsection (a) made the same changes as were made by ch. 68; added the words "or distributing station" where they appear in the second and third sentences of subsection (a) and in subsection (b); in the second sentence of subsection (a), inserted the language "within a city ... station" and the

language following "proposed liquor store;" in the third sentence of subsection (a) inserted the language " , notice of the right ... will be held, "; and substituted the present fourth sentence of subsection (a) for one which read; "Within one (1) week after the last legal notice has been published, the dispensary shall hold a public hearing to give eligible voters who live in precincts located within a one thousand (1000) feet radius of the proposed site a chance to register a protest."

The 2009 amendment, by ch. 23, throughout the section, substituted "division" for "dispensary" and "director" for "superintendent."

Compiler's Notes. — This chapter of Idaho Code comprised article 6 of the Idaho Liquor Act, headed, "Conduct of Local Liquor Stores and Distributing Stations."

23-302. Distributing stations — Notice of intent to locate. —

(a) The division may select a special distributor in any municipality where in its judgment a liquor store is not required; or in any unincorporated locality, but only if satisfied of the existence therein of adequate local police protection, upon the furnishing by said distributor of a bond satisfactory to the division, conditioned for his faithful observance of this act and the rules and regulations of the division thereunder, and if the provisions of section 23-301, Idaho Code, are complied with.

(b) In maintaining the location of any such store or station, or in discontinuing the same, the division shall give due consideration to the normal local demand for alcoholic liquor by resident temperate adult consumers and the local community sentiment with respect to the liquor traffic as expressed by ordinance or otherwise. [1939, ch. 222, § 602, p. 465; am. 1978, ch. 237, § 2, p. 506; am. 1980, ch. 301, § 2, p. 778; am. 2009, ch. 23, § 19, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, substituted “division” for “dispensary” throughout the section.

Compiler’s Notes. — For words “this act”, see Compiler’s Notes, § 23-101.

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 192 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 199.

23-303. Proximity of school. — No liquor store or distribution station shall be located within three hundred (300) feet of a school. [1939, ch. 222, § 603, p. 465.]

STATUTORY NOTES

Cross References. — Retail licensed premises not permitted near churches or schools, exceptions, § 23-913.

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 110.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 352.

23-304. Qualifications of vendors and special distributors. — A vendor or special distributor shall have been a resident of the state for at least six (6) months prior to his selection and shall be a person having a reputation for probity, temperance and integrity. [1939, ch. 222, § 604, p. 465; am. 1945, ch. 43, § 1, p. 56; am. 1973, ch. 23, § 1, p. 44.]

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 87 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 146 et seq.

23-305. Compensation of vendors and special distributors. — Vendors and special distributors shall receive uniform compensation, which compensation shall be considered a part of the cost of sales, according to classifications, fixed by the division. [1939, ch. 222, § 605, p. 465; am. 1993, ch. 238, § 1, p. 824; am. 2009, ch. 23, § 20, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, substituted “division” for “dispensary.”

23-306. General conduct and management. — In the conduct and management of liquor stores and distributing stations, vendors and special distributors shall be subject to the provisions of this act and the rules and regulations of the division. [1939, ch. 222, § 606, p. 465; am. 2009, ch. 23, § 21, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, substituted “division” for “dispensary.”

Compiler’s Notes. — For words “this act,” see Compiler’s Notes, § 23-102.

23-307. Days when sales are prohibited. — It shall be unlawful to transact the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station:

(a) After the closing hours as established by the division.

(b) On any Thanksgiving, Christmas or Memorial Day.

(c) On any Sunday, except as provided by county option pursuant to section 23-308, Idaho Code.

(d) During such other periods or days as may be designated by the division. [1939, ch. 222, § 607, p. 465; am. 1983, ch. 96, § 1, p. 209; am. 2004, ch. 79, § 1, p. 303; am. 2008, ch. 248, § 1, p. 729; am. 2009, ch. 23, § 22, p. 53.]

STATUTORY NOTES

Cross References. — Hours of sale of liquor by the drink, § 23-927.

Amendments. — The 2008 amendment, by ch. 248, deleted subsections (d) and (e), which read: “(d) On any national or state election day” and “(e) On any municipal election day held in the municipality in which a

store or distributing station may be situated during the time the polls are open” and redesignated former subsection (f) as present subsection (d).

The 2009 amendment, by ch. 23, in subsections (a) and (d), substituted “division” for “dispensary.”

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 226 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 307.

23-308. County option Sunday liquor sales — Resolution of county commissioners — Local option county election. — (1) The board of county commissioners of each county may, by resolution regularly

adopted, allow for the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station in the county on any Sunday which does not fall on Christmas Day, and such sales shall be allowed so long as the resolution remains in effect. If such a resolution is adopted by the board, a copy of such resolution shall be delivered to the director of the division and to the director of the Idaho state police.

(2) Within thirty (30) days after the effective date of this act [July 1, 2004], a petition in writing signed by not less than twenty percent (20%) of the registered, qualified electors of any county may be filed with the clerk of said county requesting an election to be held to determine whether or not the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station in the county on any Sunday which does not fall on Christmas Day, shall be allowed.

(3) In the event a petition is presented, the county commissioners of any such county shall, within five (5) days after the presentation of the petition, meet and determine the sufficiency thereof by ascertaining whether such petition is signed by the required number of registered, qualified electors of the county affected.

(4) In the event that a petition does not contain the required number of certified signatures, the commissioners shall inform the person or organization under whose authority the petition was circulated that the petition is defective for lack of certified signatures, and specify the number of additional signatures required to make the petition valid. The petition must be perfected within sixty (60) days of the date that the commissioners find the petition defective for lack of certified signatures. If the petition is not perfected within the sixty (60) day period, the commissioners shall declare the petition null and void ab initio in its entirety.

(5) In the event the county commissioners of said county determine that the petition is signed by the required percentage of registered, qualified electors, the commissioners shall forthwith make an order calling an election to be held within the county, subject to the provisions of section 34-106, Idaho Code, in the manner provided by law for holding elections for county officers. All the laws of the state of Idaho relating to the holding of elections of county officers for such county shall apply to the holding of the election provided for in this section. In addition to the other requirements of law, the notice of election shall notify the electors of the issue to be voted upon at said election. [I.C., § 23-308, as added by 2004, ch. 79, § 2, p. 303; am. 2009, ch. 23, § 23, p. 53.]

STATUTORY NOTES

Prior Laws. — Former § 23-308, comprising S.L. 1939, ch. 222, § 608, p. 465, was repealed by S.L. 1963, ch. 296, § 1.

Amendments. — The 2009 amendment, by ch. 23, in subsection (1), substituted “direc-

tor” for “superintendent” and “division” for “state liquor dispensary.”

Compiler’s Notes. — The bracketed insertion in subsection (2) was added by the compiler.

23-308A. Form of local option county election ballot. — The county clerk shall furnish the ballots to be used in the local option county election, which ballots shall contain the following words:

“Shall the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station be allowed on any Sunday which does not fall on Christmas Day, Yes.”

“Shall the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station be allowed on any Sunday which does not fall on Christmas Day, No.”

and the elector in order to vote must mark an “X” or other mark sufficient to show his intent, opposite one (1) of the questions in a space provided therefor. [I.C., § 23-308A, as added by 2004, ch. 79, § 3, p. 303.]

23-308B. Effect of local option county election. — Upon a canvass of the votes cast, the clerk of the county shall certify the result thereof to the director of the Idaho state police and to the director of the division. If a majority of the votes cast are “Shall the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station be allowed on any Sunday which does not fall on Christmas Day, Yes,” then all liquor stores and distributing stations in the county shall be allowed to transact the sale or delivery of any alcoholic liquor in, on, or from all such premises in the county on any Sunday which does not fall on Christmas Day. [I.C., § 23-308B, as added by 2004, ch. 79, § 4, p. 303; am. 2009, ch. 23, § 24, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, substituted “to the director of the Idaho state police and to the director of the

division” for “to the director and to the superintendent of the state liquor dispensary” in the first sentence.

23-308C. Subsequent local option county elections. — A similar local county option election may be subsequently called and held upon the issue of whether the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station shall be allowed on any Sunday which does not fall on Christmas Day. Such subsequent election shall be held upon the filing of a petition, as provided in section 23-308, Idaho Code, signed by the requisite percentage of qualified electors. No such subsequent election shall be held more often than two (2) years after the holding of any local option county election or subsequent election. [I.C., § 23-308C, as added by 2004, ch. 79, § 5, p. 303.]

23-309. Sales. — No vendor of any state liquor store or special distributor shall sell any alcoholic liquor or any other merchandise on behalf of the division except for cash, check, money order, credit card, electronic funds transfer or debit card. In addition, the division shall, under such rules as may be adopted by it, authorize the vendor of a state liquor store or special distributor to accept a check, credit cards, electronic funds transfer or debit card from persons licensed for the retail sale of liquor by the drink pursuant to chapter 9, title 23, Idaho Code, as payment for purchases from the division. Dishonor of any credit device given by such person shall constitute grounds for suspension or revocation of such person’s license pursuant to

section 23-933, Idaho Code, in addition to any other remedy provided by law. [1939, ch. 222, § 609, p. 465; am. 1977, ch. 124, § 1, p. 264; am. 1988, ch. 216, § 1, p. 410; am. 1999, ch. 206, § 1, p. 553; am. 2006, ch. 18, § 3, p. 68; am. 2009, ch. 23, § 25, p. 53.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 18, inserted “or any other merchandise on behalf of the dispensary” near the beginning of the section.

The 2009 amendment, by ch. 23, substituted “division” for “dispensary” throughout the section.

23-310. Original package. — Alcoholic liquor shall be sold and purchased only in the original package. [1939, ch. 222, § 610, p. 465.]

23-311. Containers. — No alcoholic liquor shall be sold to any purchaser, which is not a licensed premises, except in a sealed container [division] and no such container shall be opened upon the premises of any state warehouse, store, or distributing station. No alcoholic liquor shall be sold to a licensed premises except in a sealed container with the official seal or label prescribed by the dispensary [division]. [1939, ch. 222, § 611, p. 465; am. 2009, ch. 23, § 26, p. 1; am. 2009, ch. 282, § 2, p. 849.]

STATUTORY NOTES

Amendments. — This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 23, substituted “division” for “dispensary.”

The 2009 amendment, by ch. 282, in the section catchline, deleted “and labels” from the end; in the first sentence, inserted “which is not a licensed premises” and deleted “with the official seal or label prescribed by the

dispensary” following “sealed container”; and added the last sentence.

Compiler’s Notes. — The bracketed “[division]” in the first sentence represents surplus language after conforming the two 2009 amendments.

The bracketed “division” at the end of the section represents a legislative change made by S.L. 2009, ch. 23, but not incorporated into the amendment by S.L. 2009, ch. 282.

23-312. Persons under twenty-one and intoxicated persons — Inhibited sales. — No officer, agent, or employee of the division shall sell any alcoholic liquor to a person under the age of twenty-one (21) years or to any person intoxicated or apparently intoxicated. [1939, ch. 222, § 612, p. 465; am. 1972, ch. 330, § 1, p. 828; am. 1987, ch. 212, § 2, p. 448; am. 2009, ch. 23, § 27, p. 53.]

STATUTORY NOTES

Cross References. — Beer, sale to persons under 21 prohibited, § 23-1013.

Minors, sale by the drink to, prohibited, § 23-949.

Penalty for sales to minors, § 23-603.

Penalty for selling to intoxicated persons, § 23-605.

Amendments. — The 2009 amendment, by ch. 23, substituted “division” for “dispensary.”

Effective Dates. — Section 16 of S.L. 1987, ch. 212 declared an emergency. Approved March 31, 1987.

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 216 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 341 et seq.

23-313. Liquor not to be consumed on premises. — No vendor, officer, clerk, servant, agent, or employee of the division employed in any state liquor store, state-owned warehouse, or distributing station, shall allow any alcoholic liquor to be consumed on the premises of such state warehouse, store, or distributing station, nor shall any person consume any such liquor on such premises. [1939, ch. 222, § 613, p. 465; am. 2009, ch. 23, § 28, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, substituted “division” for “dispensary.”

CHAPTER 4

LIQUOR FUND

SECTION.

- 23-401. Liquor account created.
- 23-402. Appropriation.
- 23-403. Reserve.
- 23-404. Distribution of moneys in liquor account.
- 23-405. [Repealed.]

SECTION.

- 23-406. Administrative expense.
- 23-407. Deposit of revenue.
- 23-408. Substance abuse treatment fund.
- 23-409. Drug and mental health court supervision fund.

23-401. Liquor account created. — The state treasurer shall be custodian of an account in the agency asset fund, which is hereby created, to be known as the “liquor account,” into which shall be paid all revenues derived from sales of alcoholic beverages and other merchandise, excise taxes, licenses, permits, fees, profits on sales, sales of equipment and supplies, and all other moneys accruing or received under any of the provisions of this act. All moneys, properties, buildings, plants, apparatus, real estate, securities acquired by or through the moneys belonging to the liquor account, including interest earned thereon, shall be the property of the liquor account. [1939, ch. 222, § 701, p. 465; am. 1982, ch. 255, § 2, p. 653; am. 2006, ch. 18, § 4, p. 68.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 18, substituted “sales of alcoholic beverages and other merchandise” for “alcoholic beverages” near the middle of the first sentence.

Compiler’s Notes. — For words “this act”, see Compiler’s Notes, § 23-101.

This chapter of Idaho Code comprised article 7 of the Idaho Liquor Act, headed, “Liquor Fund.”

23-402. Appropriation. — All moneys appropriated for, accruing to, or received by said fund are hereby appropriated for the purpose of this act for the purchase of alcoholic liquor, and the purchase of other nonalcohol

merchandise sold through the division and payment of expenses of administration and operation of the division, and the same shall be paid out by the state treasurer only upon vouchers prepared and certified to by the division and approved by the state board of examiners. [1939, ch. 222, § 702, p. 465; am. 2006, ch. 18, § 5, p. 68; am. 2009, ch. 23, § 29, p. 53.]

STATUTORY NOTES

Cross References. — State board of examiners, § 67-2001 et seq.

Amendments. — The 2006 amendment, by ch. 18, inserted “and the purchase of other nonalcohol merchandise sold through the dispensary” near the middle of the section.

The 2009 amendment, by ch. 23, substituted “division” for “dispensary” throughout the section.

Compiler’s Notes. — For words “this act”, see Compiler’s Notes, § 23-101.

23-403. Reserve. — No distribution of any surplus from the liquor fund shall be made as provided in the following section, unless there shall be moneys in said fund after setting aside and reserving the following:

(a) Funds sufficient to pay all current obligations of the division.

(b) A cash reserve of fifty thousand dollars (\$50,000) over and above all other assets. [1939, ch. 222, § 703, p. 465; am. 2009, ch. 23, § 30, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, in subsection (a), substituted “division” for “dispensary”; and, in subsection (b),

inserted “fifty thousand dollars” preceding “(\$50,000)”.

23-404. Distribution of moneys in liquor account. — (1) The moneys received into the liquor account shall be transferred or appropriated as follows:

(a) An amount of money equal to the actual cost of purchase of alcoholic liquor and payment of expenses of administration and operation of the division, as determined by the director and certified quarterly to the state controller, shall be transferred back to the division; provided, that the amount so transferred back for administration and operation of the division shall not exceed the amount authorized to be expended by regular appropriation authorization.

(b) From fiscal year 2006 through fiscal year 2009, forty percent (40%) of the balance remaining after transferring the amounts authorized by paragraph (a) of this subsection shall be transferred or appropriated pursuant to this paragraph (b). Beginning in fiscal year 2010 the percentage transferred pursuant to this paragraph (b) shall increase to forty-two percent (42%) with an increase of two percent (2%) for each subsequent fiscal year thereafter until fiscal year 2014 when such percentage shall be fifty percent (50%).

(i) For fiscal year 2006 and through fiscal year 2009, one million eight hundred thousand dollars (\$1,800,000) shall be appropriated and paid to the cities and counties as set forth in paragraphs (c)(i) and (c)(ii) of this subsection;

- (ii) Two million eighty thousand dollars (\$2,080,000) shall be transferred annually to the substance abuse treatment fund, which is created in section 23-408, Idaho Code;
 - (iii) Six hundred thousand dollars (\$600,000) shall be transferred annually to the community college account [state junior college account], created in section 33-2139, Idaho Code;
 - (iv) One million two hundred thousand dollars (\$1,200,000) shall be transferred annually to the public school income fund, as defined in section 33-903, Idaho Code;
 - (v) Six hundred fifty thousand dollars (\$650,000) shall be transferred annually to the cooperative welfare account in the dedicated fund;
 - (vi) Six hundred eighty thousand dollars (\$680,000) shall be transferred annually to the drug court, mental health court and family court services fund;
 - (vii) Four hundred forty thousand dollars (\$440,000) shall be transferred annually to the drug and mental health court supervision fund which is created in section 23-409, Idaho Code; and
 - (viii) The balance shall be transferred to the general fund.
- (c) The remainder of the moneys received in the liquor account shall be appropriated and paid as follows:
- (i) Forty percent (40%) of the balance remaining after the transfers authorized by paragraphs (a) and (b) of this subsection have been made is hereby appropriated to and shall be paid to the several counties. Each county shall be entitled to an amount in the proportion that liquor sales through the division in that county during the state's previous fiscal year bear to total liquor sales through the division in the state during the state's previous fiscal year, except that no county shall be entitled to an amount less than that county received in distributions from the liquor account during the state's fiscal year 1981.
 - (ii) Sixty percent (60%) of the balance remaining after the transfers authorized by paragraphs (a) and (b) of this subsection have been made is hereby appropriated to and shall be paid to the several cities as follows:
 - 1. Ninety percent (90%) of the amount appropriated to the cities shall be distributed to those cities which have a liquor store or distribution station located within the corporate limits of the city. Each such city shall be entitled to an amount in the proportion that liquor sales through the division in that city during the state's previous fiscal year bear to total liquor sales through the division in the state during the state's previous fiscal year, except that no city shall be entitled to an amount less than that city received in distributions from the liquor account during the state's fiscal year 1981;
 - 2. Ten percent (10%) of the amount appropriated to the cities shall be distributed to those cities which do not have a liquor store or distribution station located within the corporate limits of the city. Each such city shall be entitled to an amount in the proportion that that city's population bears to the population of all cities in the state which do not have a liquor store or distribution station located within

the corporate limits of the city, except that no city shall be entitled to an amount less than that city received in distributions from the liquor account during the state's fiscal year 1981.

(2) All transfers and distributions shall be made periodically, but not less frequently than quarterly but, the apportionments made to any county or city, which may during the succeeding three (3) year period be found to have been in error either of computation or transmittal, shall be corrected during the fiscal year of discovery by a reduction of apportionments in the case of over-apportionment or by an increase of apportionments in the case of under-apportionment. The decision of the director on entitlements of counties and cities shall be final, and shall not be subject to judicial review. [I.C., § 23-404, as added by 1982, ch. 255, § 4, p. 653; am. 1983, ch. 117, § 2, p. 258; am. 1984, ch. 120, § 1, p. 276; am. 1994, ch. 180, § 37, p. 420; am. 2006, ch. 289, § 1, p. 886; am. 2007, ch. 141, § 1, p. 407; am. 2008, ch. 252, § 1, p. 738; am. 2009, ch. 23, § 31, p. 53.]

STATUTORY NOTES

Cross References. — Community college district, state board of education to notify state liquor division, of taking in of additional territory, § 33-2105.

Drug court, mental health court and family court services fund, § 1-1625.

Permanent building fund, §§ 57-1101 et seq. State controller, § 67-1001 et seq.

Taxes and other financial support for junior colleges, § 33-2113.

Prior Laws. — Former § 23-404, which comprised (1939, ch. 222, § 704, p. 465; am. 1939, ch. 173, § 9, p. 320; am. 1953, ch. 270, § 2, p. 471; am. 1961, ch. 43, § 5, p. 66; am. 1965, ch. 197, § 1, p. 439; am. 1969, ch. 381, § 1, p. 1103; am. 1971, ch. 4 (E.S.), § 1, p. 9; am. 1974, ch. 139, § 6, p. 1343; am. 1975, ch. 160, § 3, p. 414; am. 1976, ch. 317, § 2, p. 1086; am. 1981, ch. 307, § 3, p. 629), was repealed by S.L. 1982, ch. 255, § 3.

Amendments. — The 2006 amendment, by ch. 289, rewrote subsection (1)(b), which read: "From the balance remaining after transferring the amounts authorized by section (a) above:"; added subsections (1)(b)(i) and (1)(b)(vi) and made related redesignations; deleted former subsection (1)(b)(iv), which read: "Four million nine hundred forty-five thousand dollars (\$4,945,000) shall be transferred annually to the general account in the state operating fund"; added the introductory paragraph of subsection (1)(c), and made related redesignations.

The 2007 amendment, by ch. 141, in subsection (1)(b)(ii), substituted "Two million eighty thousand dollars (\$2,080,000)" for "One million two hundred thousand dollars (\$1,200,000)," "substance abuse" for "alcoholism," and "which is created in section 23-408, Idaho Code" for "which is hereby created in the trust and agency fund"; and added subsections (1)(b)(vi) and (vii) and made a related redesignation.

The 2008 amendment, by ch. 252, substituted "Six hundred thousand dollars (\$600,000)" for "Three hundred thousand dollars (\$300,000)" and "created in" for "created by" in paragraph (1)(b)(iii).

The 2009 amendment, by ch. 23, throughout the section, substituted "division" for "dispensary"; and in subsections (1)(a) and (3), substituted "director" for "superintendent."

Compiler's Notes. — The bracketed insertion in paragraph (i)(b)(iii) was added by the compiler to make the reference more accurate.

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 37 of S.L. 1994, ch. 180 became effective January 2, 1995.

Section 2 of S.L. 2006, ch. 289 declared an emergency retroactively to July 1, 2005 and approved March 31, 2006.

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 275.

23-405. Distribution by counties. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section, which comprised (1939, ch. 222, § 705, p. 465; am. 1963, ch. 111, § 1, p. 334; am. 1974, ch. 139, § 7, p. 1343; am. 1975, ch. 160, § 4, p. 414), was repealed by S.L. 1982, ch. 255, § 10.

23-406. Administrative expense. — Claims for salaries, wages, and other compensation, premiums on official bonds, traveling and other expenses of the director, secretary and other officers and employees, and all other expenditures made by the division in the exercise of its powers hereunder, shall be paid from the liquor fund as a part of the cost of the administration of this act. [1939, ch. 222, § 706, p. 465; am. 1941, ch. 10, § 10, p. 20; am. 2009, ch. 23, § 32, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, substituted "division" for "dispensary" and "director" for "superintendent."

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-101.

23-407. Deposit of revenue. — It shall be the duty of all special distributors, vendors, officers, agents, and employees to report and pay over to the division, in such manner and pursuant to such rules as may be adopted by it, all revenues derived from the sale of alcoholic beverages, all revenues derived from the sale of all other merchandise sold on behalf of the division, excise taxes, licenses, permits, fees, profits on sales, or other revenues resulting from the operation of this act, and the division shall deposit the same with the state treasurer to the credit of the liquor fund. [1939, ch. 222, § 707, p. 465; am. 2006, ch. 18, § 6, p. 68; am. 2009, ch. 23, § 33, p. 53.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 18, substituted "to such rules" for "to such regulations" and inserted "all revenues derived from the sale of all other merchandise sold on behalf of the dispensary."

The 2009 amendment, by ch. 23, substituted "division" for "dispensary" throughout the section.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-101.

23-408. Substance abuse treatment fund. — There is hereby created in the state treasury, the substance abuse treatment fund. Moneys remitted to the substance abuse treatment fund by the division and from the tax on beer and wine are intended to be utilized for substance abuse treatment services at both the state and local levels. Moneys in the fund may be expended pursuant to appropriation and are intended to assist state government and local units of government in providing affordable, accessible substance abuse treatment services, including crisis intervention and detoxification services, inpatient and outpatient treatment services, and recovery support services for all Idaho residents. The state treasurer is authorized to invest all idle moneys in the fund and the interest earned on

such investment shall be returned to the fund. [I.C., § 23-408, as added by 2007, ch. 141, § 2, p. 407; am. 2009, ch. 23, § 34, p. 53.]

STATUTORY NOTES

Prior Laws. — Former § 23-408, which comprised (I.C., § 23-408, as added by 1975, ch. 160, § 2, p. 414; am. 1978, ch. 87, § 1, p. 162), was repealed by S.L. 1982, ch. 255, § 10.

Another former § 23-408, which comprised 1939, ch. 222, § 708, p. 465; am. 1941, ch. 10,

§ 11, p. 20, regarding annual audits, was repealed by S.L. 1971, ch. 219, § 1, p. 977.

Amendments. — The 2009 amendment, by ch. 23, substituted “division” for “state liquor dispensary” in the second sentence.

23-409. Drug and mental health court supervision fund. — There is hereby created in the state treasury, the drug and mental health court supervision fund. Moneys remitted to the drug and mental health court supervision fund by the division are intended to be utilized by the Idaho department of correction for the supervision of offenders sentenced to drug or mental health court. Moneys in the fund may be expended pursuant to appropriation and are intended to assist the courts in managing and monitoring this high-risk and high-need population. The state treasurer is authorized to invest all idle moneys in the fund and the interest earned on such investment shall be returned to the fund. [I.C., § 23-409, as added by 2007, ch. 141, § 3, p. 407; am. 2009, ch. 23, § 35, p. 53.]

STATUTORY NOTES

Prior Laws. — Former § 23-409, which comprised 1939, ch. 222, § 709, p. 465; am. 1941, ch. 10, § 12, p. 20, regarding payment of audit, was repealed by S.L. 1971, ch. 219, § 2.

Amendments. — The 2009 amendment, by ch. 23, substituted “division” for “state liquor dispensary” in the second sentence.

CHAPTER 5

PERMITS AND LICENSES

SECTION.

- 23-501. Native wine or beer for personal use.
- 23-502. Sacramental wine.
- 23-503. Denatured alcohol.
- 23-504. Alcoholic nonbeverages.
- 23-505. Transportation of alcoholic beverages.
- 23-506. Permissive uses subject to regulation.
- 23-507. Manufacturers' licenses.
- 23-508. Manufacturer's bond.
- 23-509. Manufacturers and wholesalers not to give liquor away.
- 23-510. Inspection of manufactory.

SECTION.

- 23-511. [Repealed.]
- 23-512. Sales for medical or scientific purposes.
- 23-513. Term of permits or licenses.
- 23-514. Nature of permit.
- 23-515. Inspection and examination of records of permits and sales.
- 23-516. Automatic voiding of permits.
- 23-517. Suspension and revocation of permits.
- 23-518. Surrender of permits.
- 23-519. Specific grounds of suspension and revocation of permits.

23-501. Native wine or beer for personal use. — Any person shall have the privilege of manufacturing wine or brewing beer from native grown products for the personal use of himself, family, and guests. [1939, ch. 222, § 801, p. 465; am. 1999, ch. 45, § 1, p. 107.]

STATUTORY NOTES

Compiler's Notes. — This chapter comprised article 8 of the Idaho Liquor Act. It was subdivided under the following heads: "Permissive Uses Subject to Regulation," §§ 23-501 — 23-506; "Manufacturer's Licenses,"

§§ 23-507 — 23-510; "Permits to Consumers," § 23-511 (repealed by S.L. 1963, ch. 296, § 2); "Permits to Professionals," § 23-512; "General Regulations Concerning Permits," §§ 23-513 — 23-519.

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors §§ 317, 358 et seq.

23-502. Sacramental wine. — A minister, priest, rabbi, or religious organization shall have the privilege of purchasing wine for sacramental purposes from the division or from any other source within or without the state. [1939, ch. 222, § 802, p. 465; am. 2009, ch. 23, § 36, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, substituted "division" for "dispensary."

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 21 et seq.

23-503. Denatured alcohol. — Any person, firm, or corporation may manufacture or sell denatured or wood alcohol. [1939, ch. 222, § 803, p. 465.]

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 11, 275.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 7, 268, 318.

23-504. Alcoholic nonbeverages. — Any person may manufacture or sell patent and proprietary medicines, tinctures, food products, extracts, toilet articles and perfumes, and other like commodities, which are not generally classified or used as beverages, although they contain as one of their ingredients alcoholic liquor. [1939, ch. 222, § 804, p. 465.]

STATUTORY NOTES

Compiler's Notes. — Section 804-A of S.L. 1939, ch. 222, added by S.L. 1939, ch. 217, § 1, and providing that any person may lawfully possess and store alcoholic liquors law-

fully purchased for the personal use of himself, his family and guests, was repealed by S.L. 1947, ch. 178, § 3.

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 12.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 10, 31.

23-505. Transportation of alcoholic beverages. — (1) Alcoholic liquor lawfully purchased may be transported, but no person shall break open, or allow to be broken or opened any container of alcoholic liquor, or drink, or use, or allow to be drunk, or used any alcoholic liquor therein while the same is being transported. Provided however, that an unsealed alcoholic beverage container may be transported in an enclosed trunk compartment or behind the last upright seat of a vehicle which has no trunk compartment.

(2) No person in a motor vehicle, while the vehicle is on a public highway or the right-of-way of a public highway may drink or possess any open beverage containing alcoholic liquor, as defined in section 23-105, Idaho Code, beer as defined in section 23-1001, Idaho Code, or wine as defined in section 23-1303, Idaho Code, unless such person is a passenger in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation, or in the living quarters of a recreational vehicle as that term is defined in section 49-119, Idaho Code. Violation of this section is a misdemeanor for the individual in actual physical control of the vehicle, as defined in section 18-8004, Idaho Code, and an infraction for other individuals violating this section. [1939, ch. 222, § 805, p. 465; am. 1996, ch. 254, § 1, p. 835; am. 2000, ch. 248, § 1, p. 701.]

STATUTORY NOTES

Cross References. — Punishment for infraction, § 18-113A.

Punishment for misdemeanor where none prescribed, § 18-317.

JUDICIAL DECISIONS

ANALYSIS

Conflicting city ordinance.
Search and seizure.

Conflicting City Ordinance.

A city ordinance, which classifies possession of an open container of alcohol by a passenger in a motor vehicle as a misdemeanor, is in direct conflict with subsection (2) of this section, which classifies the offense as an infraction; therefore, the state statute controls, and the local ordinance is unconstitutional. *State v. Reyes*, — Idaho —, 203 P.3d 708 (Ct. App. 2008).

interior compartment of his mug, which was seized by officer pursuant to issuing a citation for an open container violation and which was pried open and searched to discover drugs, and the state failed to meet its burden of establishing the applicability of any exception to the search warrant's requirement, the district court erred in not granting defendant's motion to suppress the evidence seized. *State v. Reimer*, 127 Idaho 214, 899 P.2d 427 (1995).

Search and Seizure.

Because defendant had an actual and objectively reasonable expectation of privacy in the

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 28 et seq.

23-506. Permissive uses subject to regulation. — Any person shall have the privilege of the permissive uses hereinbefore referred to in this article without payment of fee, subject to such reasonable general regula-

tions as the division may promulgate for the purpose of preventing any abuses of the privileges thereby permitted. [1939, ch. 222, § 806, p. 465; am. 2009, ch. 23, § 37, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, substituted “division” for “dispensary.”

Compiler’s Notes. — For words “this article”, see Compiler’s Notes, § 23-501.

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 48.

23-507. Manufacturers’ licenses. — The division may grant a license to a manufacturer of alcoholic liquor for sale to the division and to customers outside of the state, subject to such regulations as the division may adopt. The fee for such permit shall be one hundred dollars (\$100). [1939, ch. 222, § 807, p. 465; am. 2009, ch. 23, § 38, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, throughout the section, substituted “division” for “dispensary”; and, in the last

sentence, inserted “one hundred dollars” preceding “(\$100)”.

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 100.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 142.

23-508. Manufacturer’s bond. — As a condition precedent to the issuance of a manufacturer’s license, the applicant shall post a bond, written by a surety company authorized to do business in Idaho, in the penal sum of one thousand dollars (\$1,000), conditioned for the faithful observation of the provisions of this act and the rules of the division promulgated thereunder. For a violation of the conditions thereof, said bond shall be forfeited to the state of Idaho, and any recovery thereon shall be covered into the liquor fund. [1939, ch. 222, § 808, p. 465; am. 2009, ch. 23, § 39, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, in the first sentence, inserted “one thousand dollars” and substituted “rules of the division” for “regulations of the dispensary.”

Compiler’s Notes. — For words “this act”, see Compiler’s Notes, § 23-101.

23-509. Manufacturers and wholesalers not to give liquor away. — No manufacturer, wholesaler, or distributor shall give away any alcoholic liquor of any kind at any time in connection with his business, except for testing or sampling purposes only. [1939, ch. 222, § 809, p. 465.]

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 192, 212-225, 277, 278.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 332.

23-510. Inspection of manufactory. — The division shall have the power at all times to inspect any manufactory for which a license is granted hereunder. [1939, ch. 222, § 810, p. 465; am. 2009, ch. 23, § 40, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, substituted “division” for “dispensary.”

23-511. Consumers’ permits. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — This section, comprising S.L. 1939, ch. 222, § 811, p. 465, was repealed by S.L. 1963, ch. 296, § 2.

23-512. Sales for medical or scientific purposes. — Under such rules and regulations as the division may adopt, it has authority to make sales of alcoholic liquor and ethyl alcohol from the division only:

(a) To a registered pharmacist operating a drug store, for scientific and mechanical purposes and for compounding and preparing medicines.

(b) To a licensed physician, dentist, or veterinarian or other licensed practitioner entitled to prescribe for healing purposes, for administering medicinally and in compounding prescriptions.

(c) To a person in charge of a regularly conducted hospital or sanitorium for administering to the sick and aged.

(d) To a person in charge of a laboratory for use in scientific pursuits and experiments.

(e) For other purposes, similar to those mentioned in this section and not specifically covered by this act. [1939, ch. 222, § 812, p. 465; am. 1963, ch. 296, § 3, p. 785; am. 2009, ch. 23, § 41, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, in the introductory paragraph, twice substituted “division” for “dispensary.”

Compiler’s Notes. — For words “this act”, see Compiler’s Notes, § 23-101.

23-513. Term of permits or licenses. — Every permit or license issued by the division shall expire on December 31st of the year in which issued. [1939, ch. 222, § 813, p. 465; am. 2009, ch. 23, § 42, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, substituted “division” for “dispensary.”

23-514. Nature of permit. — A permit shall be a personal privilege, subject to be denied, revoked, or canceled for its abuse. It shall not constitute property; nor shall it be subject to attachment and execution; nor shall it be alienable or assignable. Every permit shall be issued in the name of the applicant and no person holding a permit shall allow any other person to use the same. The division, if not satisfied of the integrity and good faith of an applicant for a permit, may refuse to issue the same, or may refuse to issue a renewal thereof. [1939, ch. 222, § 814, p. 465; am. 2009, ch. 23, § 43, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, substituted “division” for “dispensary” in the last sentence.

Compiler’s Notes. — If the provisions of this section and §§ 23-515 — 23-519 are limited to consumer permits, issued under

§ 23-511, prior to its repeal in 1963, and those issued under § 23-512, prior to its amendment in 1963, they would now be obsolete. However, they are retained for any application they may have to the permits issued under § 23-914.

23-515. Inspection and examination of records of permits and sales. — The records of the division with respect to permits and sales thereunder shall be subject to disclosure according to chapter 3, title 9, Idaho Code. [1939, ch. 222, § 815, p. 465; am. 1990, ch. 213, § 19, p. 480; am. 2009, ch. 23, § 44, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, substituted “division” for “dispensary.”

Compiler’s Notes. — If the provisions of §§ 23-514 — 23-519 are limited to consumer permits, issued under § 23-511, prior to its repeal in 1963, and those issued under § 23-512, prior to its 1963 amendment, they would now be obsolete. However, they are retained

for any application they may have to the permits issued under § 23-914.

Effective Dates. — Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

23-516. Automatic voiding of permits. — Whenever a permittee has been convicted by any court of any violation of the provisions of this act or of any crime in which the handling or use of intoxicating liquor was a contributing factor, such conviction ipso facto shall operate to void the permit of such person so convicted and any and all privileges thereunder. [1939, ch. 222, § 816, p. 465.]

STATUTORY NOTES

Compiler’s Notes. — If the provisions of §§ 23-514 — 23-519 are limited to consumer permits, issued under § 23-511, prior to its repeal in 1963, and those issued under § 23-512, prior to its 1963 amendment, they would

now be obsolete. However, they are retained for any application they may have to the permits issued under § 23-914.

For words “this act”, see Compiler’s Notes, § 23-101.

23-517. Suspension and revocation of permits. — The division may suspend or revoke a permit, for the abuse of its privileges, after reasonable

notice and fair hearing in accordance with reasonable rules of procedure prescribed by it.

In lieu of other remedies in this section authorized, the division may, as a condition precedent to a continuance of his permit, in any case where the permittee has not theretofore given bond, exact from him a bond, written by a surety company authorized to do business in Idaho, in the penal sum of one thousand dollars (\$1,000), conditioned for the faithful observance of the provisions of this act and the regulations of the division promulgated thereunder. For a violation of the conditions thereof, said bond shall be forfeited to the state of Idaho, and any recovery thereon shall be covered into the liquor fund. [1939, ch. 222, § 817, p. 465; am. 2009, ch. 23, § 45, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, throughout the section, substituted “division” for “dispensary”; and, in the second paragraph, inserted “one thousand dollars.”

Compiler’s Notes. — For words “this act”, see Compiler’s Notes, § 23-101.

If the provisions of §§ 23-514 — 23-519 are

limited to consumer permits, issued under § 23-511, prior to its repeal in 1963, and those issued under § 23-512, prior to its 1963 amendment, they would now be obsolete. However, they are retained for any application they may have to the permits issued under § 23-914.

23-518. Surrender of permits. — Whenever a permit shall have been voided, canceled or suspended, the holder thereof shall forthwith deliver the same to the division. The division shall notify all vendors and special distributors of voidances, cancellations and suspensions. No permit shall be issued to a person whose permit has been voided or canceled within a period of one (1) year from the date of voidance or cancellation of his former permit. [1939, ch. 222, § 818, p. 465; am. 2009, ch. 23, § 46, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, twice substituted “division” for “dispensary.”

Compiler’s Notes. — If the provisions of §§ 23-514 — 23-519 are limited to consumer permits, issued under § 23-511, prior to its

repeal in 1963, and those issued under § 23-512, prior to its 1963 amendment, they would now be obsolete. However, they are retained for any application they may have to the permits issued under § 23-914.

23-519. Specific grounds of suspension and revocation of permits. — Without limiting the powers of the division in the matter of revocation of permits for other cause of abuse of the privilege, the division is hereby empowered to revoke or suspend a permit of any permittee upon satisfactory proof of any of the following grounds or causes:

(a) Drunkenness or apparent drunkenness, within or without the state of Idaho.

(b) Desertion or nonsupport of family or dependents.

(c) Dependence upon public assistance or relief in any case where it appears that the purchase or consumption of intoxicating liquor by the permittee tends to deprive his family and dependents of needed subsistence. [1939, ch. 222, § 819, p. 465; am. 2009, ch. 23, § 47, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, in the introductory paragraph, twice substituted “division” for “dispensary.”

Compiler’s Notes. — If the provisions of §§ 23-514 — 23-519 are limited to consumer permits, issued under § 23-511, prior to its

repeal in 1963, and those issued under § 23-512, prior to its 1963 amendment, they would now be obsolete. However, they are retained for any application they may have to the permits issued under § 23-914.

CHAPTER 6

PENAL PROVISIONS

SECTION.

- 23-601. Violation of duty by officers and employees of division.
- 23-602. Unlawful manufacture, traffic in, transportation, and possession of alcohol beverage.
- 23-603. Dispensing to a person under the age of twenty-one years.
- 23-604. Minors — Purchase, consumption or possession prohibited.
- 23-605. Dispensing to drunk.
- 23-606. False procurement of permit or license.
- 23-607. Advertising.
- 23-608. Added penalty — Forfeiture of license or permit — Transmission of record.

SECTION.

- 23-609. Internal revenue receipt prima facie violation.
- 23-610. Possession of liquor not subject to regulation by dispensary [division] — Illegal — Exceptions.
- 23-611. Officers may seize illegal alcoholic liquor.
- 23-612. Beer, wine or other alcoholic beverages on public school grounds.
- 23-613. [Repealed.]
- 23-614. Prohibited acts — Misdemeanors — Penalties.
- 23-615. Restrictions on sale.
- 23-616. Alcohol without liquid device.

23-601. Violation of duty by officers and employees of division. —

Any officer or employee of the division who shall knowingly and willfully violate any of the provisions of this act, shall be guilty of a misdemeanor; and, upon conviction, shall be punishable by a fine of not less than three hundred dollars (\$300), nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not less than three (3) months, nor more than one (1) year, or by both such fine and imprisonment. [1939, ch. 222, § 901, p. 465; am. 2009, ch. 23, § 48, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, substituted “division” for “dispensary” in the section heading and text and inserted “three hundred dollars” and “one thousand dollars.”

Compiler’s Notes. — For words “this act”, see Compiler’s Notes, § 23-101.

This chapter of Idaho Code comprised article 9 of the Idaho Liquor Act, headed “Penal Provisions.”

JUDICIAL DECISIONS

Indictment and Information.

An information which charges the defendant with “feloniously” selling liquor while “without a license as provided by Title 23, Chapter 9

Idaho Code” sufficiently excludes the possibility of the charge having reference to a misdemeanor as defined in this chapter. *State v. Grady*, 89 Idaho 204, 404 P.2d 347 (1965).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 324, 354 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 311, 324, 380 et seq.

23-602. Unlawful manufacture, traffic in, transportation, and possession of alcohol beverage. — Except as authorized by title 23, Idaho Code, any person who shall have in possession, manufacture, transport, purchase, sell, or dispose of any alcohol beverage, including any distilled spirits, beer or wine, shall be guilty of a misdemeanor, and upon conviction shall be punished as otherwise provided by law. Upon conviction of a second or subsequent violation of this section, the defendant shall be punished by a fine of not less than three hundred dollars (\$300), nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not less than three (3) months, nor more than one (1) year, or by both such fine and imprisonment. [1939, ch. 222, § 902, p. 465; am. 1999, ch. 59, § 2, p. 151.]

STATUTORY NOTES

Cross References. — Forfeiture of license or permit, § 23-608.

Punishment for misdemeanor when not otherwise provided, § 18-113.

JUDICIAL DECISIONS

ANALYSIS

Appeal.

Application of section.

Traffic in liquor.

Appeal.

Where defendant was convicted of felony of illegal sale of liquor and, on appeal, supreme court remanded cause to trial court with directions to impose sentence of misdemeanor, such mandate was the law of the case and barred any attacks against the trial court's judgment convicting defendant of misdemeanor. *State v. Garde*, 70 Idaho 86, 212 P.2d 655 (1949).

Application of Section.

The section has been modified by § 23-938 making it a felony to sell or keep for sale any liquor without a license. *State v. Garde*, 69 Idaho 209, 205 P.2d 504 (1949).

Where one is charged with the illegal sale of liquor without a license, the contention that it was impossible to obtain a license and, therefore, be convicted only under the provisions of this section cannot be sustained. *State v. Teninty*, 70 Idaho 1, 212 P.2d 412 (1949).

An illegal sale of liquor made prior to July 1, 1947, was punishable under this section rather than § 23-938. *State v. Garde*, 70 Idaho 86, 212 P.2d 655 (1949).

Traffic in Liquor.

Complaint which charged that defendant did knowingly, wilfully, intentionally and unlawfully have in her possession, and did transport, sell and dispose of alcoholic liquor and did unlawfully sell and dispose of same to a named person was sufficient to inform defendant of the crime charged. *Mollendorf v. State*, 67 Idaho 151, 173 P.2d 519 (1946).

Judgment finding defendant guilty of unlawful traffic in liquor was sufficient notwithstanding the fact that it did not follow phraseology of complaint in that particular. *Mollendorf v. State*, 67 Idaho 151, 173 P.2d 519 (1946).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 298, 299.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 358 et seq.

23-603. Dispensing to a person under the age of twenty-one years. — Any person who is eighteen (18) years of age or older who shall sell, give, or furnish, or cause to be sold, given, or furnished, alcohol beverage, including

any distilled spirits, beer or wine, to a person under the age of twenty-one (21) years shall be guilty of a misdemeanor and upon conviction thereof may be punished by a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) per violation, or by imprisonment in the county jail for a period not to exceed one (1) year, or by both such fine and imprisonment. A second or subsequent violation of this section by the same defendant shall constitute a misdemeanor and upon conviction thereof the defendant shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than two thousand dollars (\$2,000) per violation, or imprisonment in the county jail for a period not to exceed one (1) year, or by both such fine and imprisonment. Notwithstanding the provisions of section 19-4705, Idaho Code, moneys received pursuant to such fines shall be deposited in the substance abuse treatment fund, as created in section 23-408, Idaho Code. Upon conviction of any person for a violation of the provisions of this section, the court shall notify the director of the Idaho state police. The director shall review the circumstances of the conviction, and if the dispensing took place at a licensed establishment or other retailer or distributor, the director may take administrative action he considers appropriate against the licensee or business including suspension of the license for not to exceed six (6) months, a fine, or both such suspension and fine. [1939, ch. 222, § 903, p. 465; am. 1972, ch. 330, § 2, p. 828; am. 1987, ch. 212, § 3, p. 448; am. 1999, ch. 59, § 3, p. 151; am. 1999, ch. 397, § 1, p. 1112; am. 2000, ch. 469, § 56, p. 1450; am. 2004, ch. 192, § 1, p. 602; am. 2007, ch. 141, § 4, p. 407.]

STATUTORY NOTES

Cross References. — Sale of beer to persons under 21 prohibited, § 23-1013.

Sales to persons under 21 by state stores prohibited, § 23-312.

Amendments. — This section was amended by two 1999 acts — ch. 59, § 3 and ch. 397, § 1, both effective July 1, 1999, which do not appear to conflict and have been compiled together.

The 1999 amendments, by ch. 59, § 3, and ch. 397, § 1, in the catchline, substituted

“Dispensing” for “Disposal”; in the first sentence, substituted “alcohol beverage, including any distilled spirits, beer or wine, for “alcoholic or intoxicating liquor”; deleted “, except for medicinal purposes,” preceding “shall be guilty of a misdemeanor”; and added the present last two sentences.

The 2007 amendment, by ch. 141, in the third sentence, substituted “substance abuse” for “alcoholism” and “section 23-408” for “section 23-404.”

JUDICIAL DECISIONS

ANALYSIS

Corroborative evidence.

Sufficiency of evidence.

Unlicensed seller.

Corroborative Evidence.

In prosecution for furnishing liquor to minor, the testimony of the complaining witness need not be corroborated. *State v. Cacavas*, 55 Idaho 538, 44 P.2d 1110 (1935).

Sufficiency of Evidence.

Evidence was held to sustain conviction for

furnishing liquor to minors. *State v. Parris*, 55 Idaho 506, 44 P.2d 1118 (1935).

Unlicensed Seller.

An unlicensed seller of alcoholic or intoxicating liquor should not escape the liability imposed upon, and the duty of care required of, a licensed seller; the hazard to be guarded

against is the same, that of unleashing an obviously intoxicated adult or minor upon the

highways. *Fischer v. Cooper*, 116 Idaho 374, 775 P.2d 1216 (1989).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 49, 220 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 345 et seq.

23-604. Minors — Purchase, consumption or possession prohibited. — Any person under twenty-one (21) years of age who shall purchase, attempt to purchase, or otherwise consume or possess any alcohol beverage, including any distilled spirits, beer or wine, shall be guilty of a misdemeanor and shall be punished according to the schedule set out in section 18-1502, Idaho Code. [I.C., § 23-604, as added by 1999, ch. 397, § 2, p. 1112.]

STATUTORY NOTES

Prior Laws. — Former § 23-604, which comprised 1939, ch. 222, § 904, p. 465, was

repealed by S.L. 1994, ch. 143, § 1, effective July 1, 1994.

JUDICIAL DECISIONS

Constitutionality.

Punishment of persons 18 to 21 years of age for possession of alcohol, including suspension of driver's license, is not violative of either equal protection or due process rights, since the state has a legitimate interest in the prevention of underage drinking; suspension

of a driver's license is a form of deterrence, and the fact that the suspension is applicable to adults between eighteen and twenty-one does not render it unconstitutional, since they are still subject to restrictions on drinking. *State v. Bennett*, 142 Idaho 166, 125 P.3d 522 (2005).

23-605. Dispensing to drunk. — Any person who sells, gives, or dispenses any alcohol beverage, including any distilled spirits, beer or wine, to another person who is intoxicated or apparently intoxicated shall be guilty of a misdemeanor. [1939, ch. 222, § 905, p. 465; am. 1999, ch. 59, § 4, p. 151.]

STATUTORY NOTES

Cross References. — Punishment for misdemeanor when not otherwise provided, § 18-113.

JUDICIAL DECISIONS

ANALYSIS

Company picnic.
Unlicensed seller.

Company Picnic.

Action of employer and employee association in making intoxicating beverages available at company picnic, whereby employee who consumed such beverages was subsequently involved in an automobile accident whereby plaintiffs' son was killed, presented a genuine triable fact as to the liability of both the employer and the association in providing such beverages and whether employee was

acting within the course and scope of his employment, and further made the employer susceptible to civil action and potential liability in participating with the association in furnishing the attendees of company picnic substantial quantities of intoxicants without supervising the distribution and consumptions of such intoxicants. *Slade v. Smith's Mgt. Corp.*, 119 Idaho 482, 808 P.2d 401 (1991).

Unlicensed Seller.

An unlicensed seller of alcoholic or intoxicating liquor should not escape the liability imposed upon, and the duty of care required of, a licensed seller; the hazard to be guarded

against is the same, that of unleashing an obviously intoxicated adult or minor upon the highways. *Fischer v. Cooper*, 116 Idaho 374, 775 P.2d 1216 (1989).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 219.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 341 et seq.

A.L.R. — Common-law right of action for

damages sustained by plaintiff in consequence for sale or gift of intoxicating liquor or habit-forming drug to another. 97 A.L.R.3d 528; 62 A.L.R.4th 16.

23-606. False procurement of permit or license. — Any person who procures, or attempts to procure, a permit or license under the provisions of title 23, Idaho Code, by false or fraudulent representations, or under a false or fictitious name, shall be guilty of a misdemeanor. [1939, ch. 222, § 906, p. 465; am. 1999, ch. 59, § 5, p. 151.]

STATUTORY NOTES

Cross References. — Punishment for misdemeanor when not otherwise provided, § 18-113.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-101.

23-607. Advertising. — Except as permitted by federal statute and regulations, there shall be no public advertisement or advertising of alcoholic liquors in any manner or form within the state of Idaho.

(1) No person shall publish, exhibit, or display or permit to be displayed any other advertisement or form of advertisement, or announcement, publication, or price list of, or concerning any alcoholic liquors, or where, or from whom the same may be purchased or obtained, unless permitted so to do by the regulations enacted by the division and then only in strict accordance with such regulations.

(2) This section of the act shall not apply however:

(a) To the division.

(b) To the correspondence, or telegrams, or general communications of the commission, or its agents, servants, and employees.

(c) To the receipt or transmission of a telegram or telegraphic copy in the ordinary course of the business of such agents, servants, or employees of any telegraph company.

A violation of this section shall constitute a misdemeanor. [1939, ch. 222, § 907, p. 465; am. 2009, ch. 23, § 49, p. 53.]

STATUTORY NOTES

Cross References. — Punishment for misdemeanor when not otherwise provided, § 18-113.

Amendments. — The 2009 amendment, by ch. 23, in subsections (1) and (2)(a), substi-

tuted "division" for "state liquor dispensary" or similar language.

Compiler's Notes. — For words "the act", see Compiler's Notes, § 23-101.

23-608. Added penalty — Forfeiture of license or permit — Transmission of record. — Whenever, in any court in this state, a defendant is convicted of a violation of title 23, Idaho Code, or of any law of this state relating to alcohol beverages including distilled spirits, beer or wine, or in any case in which it appears that the crime was committed while the defendant was under the influence of alcohol beverages, it shall be the duty of the court to include in its judgment the forfeiture of any license or permit issued to the defendant by the division or the Idaho state police pursuant to title 23, Idaho Code, and the court shall forthwith transmit to the issuing authority a certified copy of its judgment. [1939, ch. 222, § 908, p. 465; am. 1999, ch. 59, § 6, p. 151; am. 2000, ch. 469, § 57, p. 1450; am. 2009, ch. 23, § 50, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, substituted “division” for “state liquor dispensary.”

Compiler’s Notes. — For words “this act”, see Compiler’s Notes, § 23-101.

Sections 23-514 — 23-519, relating to per-

mits, were rendered obsolete by S.L. 1963, ch. 296, §§ 2 and 3, which repealed § 23-511, providing for consumer permits, and amended § 23-512, so as to delete the provisions for special permits.

23-609. Internal revenue receipt prima facie violation. — The issuance by the United States of an internal revenue retail liquor dealer special tax stamp or receipt to any person as a dealer in alcoholic liquors shall be prima facie evidence of the sale of alcoholic liquors by such person during the time the stamp or receipt is in force and effect. A copy of such stamp or receipt or of the record of the issuance thereof, certified to by a United States internal revenue officer having charge of such record, is admissible as evidence in like case and with like effect as the original stamp or receipt. [1939, ch. 222, § 909, p. 465; am. 1939, ch. 217, § 2, p. 459.]

JUDICIAL DECISIONS

Identification of Receipt.

In action to abate liquor nuisance, an internal revenue tax receipt which could not be identified as having been issued to defendant

was not admissible in evidence. *State ex rel. Good v. Boyle*, 67 Idaho 512, 186 P.2d 859 (1947).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 308.

23-610. Possession of liquor not subject to regulation by dispensary [division] — Illegal — Exceptions. — It shall be unlawful for any person, which is not a licensed premises, to possess more than two (2) quarts of alcoholic liquor that has not been subjected to regulation by the division, except public carriers transporting alcoholic liquor for the division. All licensed premises shall have liquor to which is affixed the official seal or label prescribed by the liquor dispensary [division]. [1939, ch. 222, § 910, as added by 1947, ch. 178, § 1, p. 435; am. 2009, ch. 23, § 51, p. 53]; am. 2009, ch. 282, § 3, p. 849.]

STATUTORY NOTES

Amendments. — This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 23, twice substituted “division” for “Idaho liquor dispensary.”

The 2009 amendment, by ch. 282, in the section catchline, deleted “unstamped” preceding “liquor” and inserted “not subject to regulation by dispensary”; in the first sen-

tence, inserted “which is not a licensed premises” and substituted “that has not been subjected to regulation” for “that does not have affixed thereto the official seal or label prescribed,” and add the last sentence.

Compiler’s Notes. — The bracketed “[division]” in the section heading and at the end of the section represent a legislative change made by S.L. 2009, ch. 23, but not incorporated by S.L. 2009, ch. 282.

JUDICIAL DECISIONS

Evidence.

Where officers went on the premises and while visiting with a justice of the peace looked through the windows of the automobile and observed the unstamped, unopened cases of whiskey, the possession of which was in violation of the Idaho laws, the search before and subsequent seizure of the liquor after the arrest was lawful and the liquor in the car was admissible evidence. *State v. Peterson*, 81 Idaho 233, 340 P.2d 444 (1959).

Where there was sufficient evidence in the record to sustain a conviction of the defendant of the offense of illegal possession of liquor without admission of the exhibit, the officers testifying they saw unstamped liquor in defendant’s possession, such testimony was sufficient to sustain the conviction of the crime and it was error to grant the motion to instruct the jury to acquit the defendant. *State v. Peterson*, 81 Idaho 233, 340 P.2d 444 (1959).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 308.

23-611. Officers may seize illegal alcoholic liquor. — The commissioner or any of his agents, any sheriff, constable or other peace officer who shall find any liquor, possessed, manufactured, transported, purchased, sold or disposed of by any person in violation of the provisions of this act, or any other laws of the state of Idaho, may forthwith seize and remove the same and keep the same as evidence, and upon conviction of the person, the said liquor and all packages and receptacles containing the same shall be forfeited to the state of Idaho and, in addition, persons so violating this act shall be subject to the other penalties herein prescribed. [1939, ch. 222, § 911, as added by 1947, ch. 178, § 2, p. 435.]

STATUTORY NOTES

Compiler’s Notes. — For words “this act”, see Compiler’s Notes, § 23-101.

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 396 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 551 et seq.

23-612. Beer, wine or other alcoholic beverages on public school grounds. — Every person who possesses or consumes any beer, wine or other alcoholic beverage while present at any public school function on the

property of a school district is guilty of a misdemeanor. Persons under twenty-one (21) years of age who are found to be in violation of the provisions of this section because of their age shall be punished according to section 18-1502, Idaho Code. [I.C., § 23-612, as added by 1980, ch. 389, § 1, p. 989; am. 1981, ch. 222, § 5, p. 412; am. 1982, ch. 110, § 4, p. 311; am. 1987, ch. 212, § 4, p. 448; am. 1990, ch. 344, § 1, p. 929.]

STATUTORY NOTES

Cross References. — Punishment for misdemeanor when not otherwise provided, § 18-113.

JUDICIAL DECISIONS

Cited in: Gano v. School Dist. No. 411, 674 F. Supp. 796 (D. Idaho 1987).

23-613. Grandfather clause. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 23-613, as added by 1987, ch. 212, § 15, p. 448, was repealed by S.L. 1999, ch. 59, § 9, effective July 1, 1999.

23-614. Prohibited acts — Misdemeanors — Penalties. — (1) No person, partnership, association or corporation shall conduct, permit, or encourage any of the following acts or activities in or upon premises licensed pursuant to title 23, Idaho Code:

(a) Employment or use of any person, including allowing any person on the premises, while such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals.

(b) Employment or use of any person who touches, caresses or fondles the breast, buttocks, anus or genitals of any other person, or who is so touched, caressed or fondled by another person.

(c) Employment or use of any person to wear or use any device or covering, exposed to view, which simulates the breast, genitals, anus, pubic hair or any portion thereof.

(d) Employment or use of any person to perform acts of or acts which simulate sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.

(e) The showing of films, still pictures, electronic reproductions, or other visual reproductions depicting:

(i) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.

(ii) Any person being touched, caressed or fondled on the breast, buttocks, anus or genitals.

- (iii) Scenes wherein a person displays the vulva or the anus or the genitals.
- (iv) Scenes wherein artificial devices or inanimate objects are employed to portray any of the prohibited activities described in this section.
- (2) A violation of any of the provisions of this section by any agent, employee, or other person in any way acting on behalf of a licensee shall constitute a misdemeanor, and upon conviction such person shall be fined not less than the sum of one hundred dollars (\$100) nor more than the sum of three hundred dollars (\$300), or be imprisoned in the county jail for not less than thirty (30) days nor more than six (6) months, or both such fine and imprisonment. Any court in which a judgment of conviction is entered shall certify a copy thereof to the director, and the director shall thereupon commence administrative proceedings. The director shall review the circumstances and may take action he considers appropriate against the licensee including suspension of the license for not to exceed six (6) months, a fine, or both such suspension and fine or may revoke the license.
- (3) In addition to misdemeanor violations or other criminal proceedings instituted under this section, upon sufficient proof to the director, the director shall take administrative action as provided in subsection (2) of this section against any licensee in the event any person is found to have committed any of the above proscribed acts. The proceedings shall be in accordance with provisions of the administrative procedure act. [I.C., § 23-614, as added by 1999, ch. 59, § 7, p. 151; am. 2000, ch. 254, § 1, p. 720.]

STATUTORY NOTES

Cross References. — Idaho administrative procedure act, § 67-5201 et seq.

Effective Dates. — Section 2 of S.L. 2000, ch. 254 declared an emergency. Approved April 12, 2000.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

- Constitutionality.
- Enforcement.
- Legislative intent.
- Liability of licensee.
- “Permitting” improper conduct.
- “Person” defined.
- Review.
- Sources of reference.
- Terms defined.

Constitutionality.
Because in liquor license revocations, the department of law enforcement (now state police) relies on a standard of proof akin to the preponderance of evidence standard generally applied in administrative hearings and

provides for judicial review, establishment could not claim that revocation of its license pursuant to former § 23-1010A deprived it of its constitutional due process rights or conferred judicial power to the legislatively created agency in contravention of Const., Art. V,

§ 2. *Northern Frontiers, Inc. v. State ex rel. Cade*, 129 Idaho 437, 926 P.2d 213 (Ct. App. 1996).

Enforcement.

The fact that a particular group of nude dancers had performed in almost every state of the United States and Canada without enforcement actions similar to one brought under former § 23-1010A was not relevant to an enforcement to the liquor laws of Idaho. *State ex rel. Richardson v. Pierandozzi*, 117 Idaho 1, 784 P.2d 331 (1989).

Because the commission of any one act proscribed in former § 23-1010A mandates revocation of a liquor license and a review of the record as a whole provided substantial competent evidence to support director of law enforcement's conclusion that establishment violated this section by allowing male dancers to expose the cleft of the buttocks and allowing patrons to lick the nipples of the dancers, order of district court upholding revocation was affirmed. *Northern Frontiers, Inc. v. State ex rel. Cade*, 129 Idaho 437, 926 P.2d 213 (Ct. App. 1996).

Legislative Intent.

Former § 23-1010A was intended to prevent sexual stimuli in places where liquor is sold; it was not intended to apply to natural and customary conduct in the rest rooms of licensed premises. *State ex rel. Richardson v. Pierandozzi*, 117 Idaho 1, 784 P.2d 331 (1989).

Liability of Licensee.

Liquor licensees were personally liable for violating the provisions of former § 23-1010A where they conducted, permitted, or encouraged the violation. *State ex rel. Richardson v. Pierandozzi*, 117 Idaho 1, 784 P.2d 331 (1989).

"Permitting" Improper Conduct.

Although it was uncontested that licensee described to certain nude dancers employed at his establishment the type of performance which would not be permitted under the terms of the liquor license, this fact alone did not absolve licensee of responsibility for the dancers' improper conduct; licensee was present at the performance and did not at-

tempt to stop or control the performance when the dancers began to expose portions of their anatomies in violation of the requirement of former § 23-1010A, of which the licensee was admittedly aware. Thus, licensee's failure to act amounted to "permitting" the improper conduct at issue. *State ex rel. Richardson v. Pierandozzi*, 117 Idaho 1, 784 P.2d 331 (1989).

"Person" Defined.

The word "person" as used in former § 23-1010A, indicates that the legislature intended the statute to apply to nudity of either sex; the word "or" following the "female breast" clause is a disjunctive term, separating the "female" adjective from the remainder of the list. *State ex rel. Richardson v. Pierandozzi*, 117 Idaho 1, 784 P.2d 331 (1989).

Review.

Director of the department of law enforcement (now state police) acted within the mandates of the APA and provided findings necessary to support his conclusion where it was sufficiently clear from the record that his rejection of the hearing officer's finding and finding that a violation of former § 23-1010A did occur requiring revocation of establishment's liquor license were supported by the transcript of witness' testimony. *Northern Frontiers, Inc. v. State ex rel. Cade*, 129 Idaho 437, 926 P.2d 213 (Ct. App. 1996).

Sources of Reference.

The provisions of former § 23-1010A are susceptible to definitions according to common sense and commonly available sources of reference. *State ex rel. Richardson v. Pierandozzi*, 117 Idaho 1, 784 P.2d 331 (1989).

Terms Defined.

For the purpose of determining grounds for liquor license revocation "cleft of buttock" is limited to the exposition of a substantial portion of the entire cleft. The term "pubic hair" is defined as that hair which is found on the lower hypogastric region of the abdomen, below the umbilical region. *State ex rel. Richardson v. Pierandozzi*, 117 Idaho 1, 784 P.2d 331 (1989).

23-615. Restrictions on sale. — No person licensed pursuant to title 23, Idaho Code, or his or its employed agents, servants or bartenders shall sell, deliver or give away, or cause or permit to be sold, delivered, or given away, or allowed to be consumed, any alcohol beverage, including any distilled spirits, beer or wine, to:

(1) Any person under the age of twenty-one (21) years, proof of which shall be a validly issued state, district, territorial, possession, provincial, national or other equivalent government driver's license, identification card or military identification card bearing a photograph and date of birth, or a valid passport.

- (2) Any person actually, apparently or obviously intoxicated.
- (3) An habitual drunkard.
- (4) An interdicted person.

Any person under the age of twenty-one (21) years, or other person, who knowingly misrepresents his or her qualifications for the purpose of entering licensed premises or for obtaining alcohol beverages from such licensee shall be equally guilty with such licensee and shall, upon conviction thereof, be guilty of a misdemeanor. [I.C., § 23-615, as added by 1999, ch. 59, § 8, p. 151.]

STATUTORY NOTES

Cross References. — Beer, sale to persons under 21 prohibited, § 23-1013.

Dispensing liquor to intoxicated person, misdemeanor, § 23-605.

Penalty, § 23-935.

Sale by state liquor stores to minors or intoxicated persons prohibited, § 23-312; penalties for such sales, §§ 23-603, 23-605.

JUDICIAL DECISIONS

Civil Liability.

The sale of alcoholic beverages in Idaho by a licensed vendor of such beverages to an actually, apparently and obviously intoxicated person known to be a minor can be a contributing actual and proximate cause of damage resulting to a third person from the subsequent negligent operation of an automobile by such intoxicated minor, thereby giving rise to a cause of action against such vendor;

and the question of whether such vendor could reasonably have foreseen or anticipated that such sale to such minor might result in injury to others and whether such vendor's conduct in so acting fell below that of a person of ordinary prudence acting under the same circumstances and conditions is one of fact to be resolved by the jury. *Alegria v. Payonk*, 101 Idaho 617, 619 P.2d 135 (1980).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 204 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 303, 304.

23-616. Alcohol without liquid device. — (1) As used in this section:

(a) "Alcohol without liquid device" means any machine, device or process that mixes an alcoholic product with oxygen or another gas to produce vaporized alcohol for the purpose of consumption through inhalation.

(b) "Vaporized alcohol" means an alcoholic product created by mixing alcohol with oxygen or another gas to produce a vapor or mist for the purpose of consumption through inhalation.

(2) A person shall not use or offer for use, possess, purchase, sell or offer for sale an alcohol without liquid device. A premise [premises] licensed pursuant to chapter 9, 10 or 13, title 23, Idaho Code, shall not use or offer for use, possess, purchase, sell or offer for sale an alcohol without liquid device.

(3) The Idaho state police may promulgate rules to allow for the possession, sale or use of an alcohol without liquid device by certain hospitals, universities, or pharmaceutical or biotechnology companies for bona fide research or medical purposes.

(4) A person who violates this section shall be guilty of a misdemeanor. Upon conviction or a finding of guilt of a second or subsequent violation of

this section, the defendant shall be punished by a fine of not less than three hundred dollars (\$300), nor more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not less than three (3) months, nor more than one (1) year, or by both such fine and imprisonment.

(5) An alcohol without liquid device as defined in this section and except as in this section authorized is hereby declared to be a public nuisance and in this title is referred to as a liquor nuisance pursuant to section 23-701, Idaho Code. [I.C., § 23-616, as added by 2006, ch. 254, § 1, p. 792.]

STATUTORY NOTES

Compiler's Notes. — The bracketed term in subsection (2) was added as the apparent intended word.

CHAPTER 7

LIQUOR NUISANCES

SECTION.

23-701. Liquor nuisance defined — Maintaining.

23-702. Building and equipment.

23-703. Maintenance a misdemeanor.

23-704. Abatement and prosecution.

23-705. Action for maintenance.

23-706. Temporary injunction.

23-707. Evidence of reputation admissible.

SECTION.

23-708. Perpetual injunction and order of abatement — Execution of order.

23-709. Disposition of proceeds of sale.

23-710. Violation of injunction and order of abatement a contempt.

23-711. Release of building from injunction.

23-712. Costs a lien.

23-701. Liquor nuisance defined — Maintaining. — The conducting or maintaining of a place or of a vehicle of any sort for the manufacture, storage, transportation, sale, or dispensing of alcoholic liquor, except as in this act authorized, permitted, or licensed, is hereby declared to be a public nuisance and in this article is referred to as a liquor nuisance. [1939, ch. 222, § 1001, p. 465.]

STATUTORY NOTES

Cross References. — Nuisances generally, § 52-101 et seq.

Retail sales by the drink, violation of license law a moral nuisance, § 23-937.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-101.

The words "this article" refer to article 10 of the Idaho Liquor Act compiled as §§ 23-701 — 23-712.

This chapter of Idaho Code comprised article 10 of the Idaho Liquor Act, headed, "Liquor Nuisances."

JUDICIAL DECISIONS

ANALYSIS

Complaint.

Evidence to establish nuisance.

Complaint.

Where complaint to abate liquor nuisance was in substantially the words of the statute it was sufficient. State ex rel. Good v. Boyle, 67 Idaho 512, 186 P.2d 859 (1947); State ex

rel. Good v. Holmes, 67 Idaho 525, 186 P.2d 867 (1947); State ex rel. Good v. Evans, 67 Idaho 526, 186 P.2d 868 (1947); State ex rel. Good v. Hansen, 67 Idaho 528, 186 P.2d 869 (1947).

Evidence to Establish Nuisance.

The question of whether a nuisance exists may be answered in the affirmative by evidence of one sale, or by evidence of no sale, where the circumstances are such that a reasonable man must conclude that an unlawful business is being carried on. State ex rel. Good v. Boyle, 67 Idaho 512, 186 P.2d 859 (1947); State ex rel. Good v. Holmes, 67 Idaho 525, 186 P.2d 867 (1947); State ex rel. Good v. Evans, 67 Idaho 526, 186 P.2d 868 (1947); State ex rel. Good v. Hansen, 67 Idaho 528, 186 P.2d 869 (1947).

The test, in order to constitute a nuisance under this section, is not the number of sales made nor the length of time liquor is kept on

the premises, but whether the place is maintained for the keeping and sale of liquor within the meaning of the statute. State ex rel. Good v. Boyle, 67 Idaho 512, 186 P.2d 859 (1947); State ex rel. Good v. Holmes, 67 Idaho 525, 186 P.2d 867 (1947); State ex rel. Good v. Evans, 67 Idaho 526, 186 P.2d 868 (1947); State ex rel. Good v. Hansen, 67 Idaho 528, 186 P.2d 869 (1947).

In suit to abate liquor nuisance, an internal revenue retail liquor dealer special tax stamp or receipt was not admissible in evidence, since it could not be ascertained from the face of the document that it was actually issued to the defendant. State ex rel. Good v. Boyle, 67 Idaho 512, 186 P.2d 859 (1947).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 345 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 379, 453, 454.

23-702. Building and equipment. — A building, vehicle, car, or boat where alcoholic liquors are manufactured, stored, transported, sold, or otherwise dispensed, or where persons are permitted to resort for the purpose of purchasing or drinking alcoholic liquor, except as in this act authorized, permitted, or licensed, and all alcoholic liquor, vessels, glasses, kegs, pumps, bars, and other property and equipment found or used in connection therewith are hereby declared to be a public nuisance and in this article such a public nuisance is referred to as a liquor nuisance. [1939, ch. 222, § 1002, p. 465.]

STATUTORY NOTES

Compiler's Notes. — For words "this act" and "this article", see Compiler's Notes, § 23-701.

23-703. Maintenance a misdemeanor. — Any person who conducts or maintains a liquor nuisance is guilty of a misdemeanor. [1939, ch. 222, § 1003, p. 465.]

STATUTORY NOTES

Cross References. — Punishment for misdemeanor when not otherwise provided, § 18-113.

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 379, 453, 454.

23-704. Abatement and prosecution. — Except as in this article otherwise provided, a liquor nuisance may be abated and a person maintaining a liquor nuisance may be prosecuted and punished, as provided by law in other cases of public nuisance. [1939, ch. 222, § 1004, p. 465.]

STATUTORY NOTES

Cross References. — Abatement of public nuisances, §§ 52-201 et seq., and 52-401 et seq.

Compiler's Notes. — For words "this article", see Compiler's Notes, § 23-701.

JUDICIAL DECISIONS

ANALYSIS

Evidence.

Harmless error.

Inferences.

Nature of action.

Evidence.

The reputation of a place is admissible for the purpose of proving the existence of a nuisance. State ex rel. Good v. Boyle, 67 Idaho 512, 186 P.2d 859 (1947).

The failure of defendant to testify is a circumstance which may be considered by the court in determining whether a nuisance existed within the meaning of the statute. State ex rel. Good v. Boyle, 67 Idaho 512, 186 P.2d 859 (1947); State ex rel. Good v. Holmes, 67 Idaho 525, 186 P.2d 867 (1947); State ex rel. Good v. Evans, 67 Idaho 526, 186 P.2d 868 (1947); State ex rel. Good v. Hansen, 67 Idaho 528, 186 P.2d 869 (1947).

Evidence of a sale of liquor, subsequent to the filing of a complaint, was admissible to show the continuing character of the nuisance where the complaint alleged antecedent facts which were proven. State ex rel. Good v. Boyle, 67 Idaho 512, 186 P.2d 859 (1947).

In proceeding where defendant admitted in his answer that he was in possession of premises and operating thereon, it was not error to admit in evidence an application to the county commissioners for a permit to retail beer. State ex rel. Good v. Boyle, 67 Idaho 512, 186 P.2d 859 (1947).

The defendant's application to county commissioners for a license to retail beer in a certain establishment was admissible to prove the occupancy of the premises and ownership of the business by the defendant. State

ex rel. Good v. Boyle, 67 Idaho 512, 186 P.2d 859 (1947).

Harmless Error.

In action to abate liquor nuisance, it was error for court to admit in evidence an internal revenue retail dealer's tax stamp which had been issued defendant; however, it was harmless error since the case was tried by the court and the evidence supported the decree which was not affected by the erroneous evidence. State ex rel. Good v. Boyle, 67 Idaho 512, 186 P.2d 859 (1947).

Inferences.

In an action based on agency relationship between defendant and bartender, such agency may be inferred from circumstances showing that defendant was the owner and occupant of the place and that the bartender was on duty selling liquor. State ex rel. Good v. Boyle, 67 Idaho 512, 186 P.2d 859 (1947).

Nature of Action.

Proceedings under this section are in rem, and the ignorance of the owner is not a defense, and the owners, lessees and occupants are made parties to this action not because of knowledge or participation, but in order to bind their property rights by the decree. State ex rel. Good v. Boyle, 67 Idaho 512, 186 P.2d 859 (1947); State ex rel. Good v. Holmes, 67 Idaho 525, 186 P.2d 867 (1947); State ex rel. Good v. Evans, 67 Idaho 526, 186 P.2d 868 (1947); State ex rel. Good v. Hansen, 67 Idaho 528, 186 P.2d 869 (1947).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 352 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 598 et seq.

23-705. Action for maintenance. — The prosecuting attorney may maintain an action of an equitable nature, as relator, in the name of the state of Idaho, to abate a liquor nuisance, perpetually to enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a liquor nuisance. [1939, ch. 222, § 1005, p. 465.]

JUDICIAL DECISIONS

Complaint — Sufficiency.

In action to state liquor nuisance, court's jurisdiction was not abated by reason of the fact that body of complaint contained no allegation that the county attorney was the person maintaining the action. *State ex rel. Good*

v. Boyle, 67 Idaho 512, 186 P.2d 859 (1947); *State ex rel. Good v. Holmes*, 67 Idaho 525, 186 P.2d 867 (1947); *State ex rel. Good v. Evans*, 67 Idaho 526, 186 P.2d 868 (1947); *State ex rel. Good v. Hansen*, 67 Idaho 528, 186 P.2d 869 (1947).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 359 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 598 et seq.

23-706. Temporary injunction. — Upon the filing of a verified complaint therefor, in any court of competent jurisdiction, the court or a judge at chambers, if satisfied that the liquor nuisance complained of exists, may allow a temporary writ of injunction, without bond, enjoining the defendant from maintaining any such nuisance within the jurisdiction of the court issuing such writ; but no such injunction shall issue unless it be made to appear to the satisfaction of the court that the owner or agent of the owner of such building or place knew, or had been personally served with notice, that such building or place was being so used and had failed to abate such nuisance, or that upon diligent inquiry such owner or agent of the owner could not be found within the state for the service of such preliminary notice. [1939, ch. 222, § 1006, p. 465.]

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 370.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 601 et seq.

23-707. Evidence of reputation admissible. — At all hearings upon the merits, evidence of the general reputation of the building or place constituting the alleged nuisance, of the inmates thereof, and of those resorting thereto, is admissible for the purpose of proving the existence of such nuisance. [1939, ch. 222, § 1007, p. 465.]

JUDICIAL DECISIONS

Evidence.

Reputation of a place is admissible for the purpose of proving the existence of a nuisance.

State ex rel. Good v. Boyle, 67 Idaho 512, 186 P.2d 859 (1947).

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 483 et seq.

23-708. Perpetual injunction and order of abatement — Execution of order. — If the existence of the nuisance is established, the court shall enter a decree perpetually restraining all persons from maintaining or permitting such nuisance, and from using the building or place in which the

same is maintained for any purpose, for a period of one (1) year thereafter, unless such decree is sooner vacated, as hereinafter provided. While said decree remains in effect, such building or place shall be in the custody of the court.

An order of abatement shall also issue as a part of such decree, which order shall direct the sheriff of the county to remove from such building or place all fixtures and movable property used in conducting or aiding or abetting such nuisance, to sell the same in the manner provided by law for the sale of chattels under execution, to close such building or place against its use for any purpose, and to keep it closed for a period of one (1) year, unless sooner released as hereinafter provided. The sheriff's fees for removing and selling the movable property shall be taxed as a part of the costs, and shall be the same as those for levying upon and selling like property under execution. For closing the building and keeping it closed the court shall allow a reasonable fee to be taxed as a part of the costs. [1939, ch. 222, § 1008, p. 465.]

STATUTORY NOTES

Cross References. — Sheriff's fees, § 31-3203.

JUDICIAL DECISIONS

Scope of Injunction.

In proceeding to abate liquor nuisance, that part of court's decree which enjoined defendants from maintaining a nuisance in any place other than that mentioned in the complaint was a nullity. *State ex rel. Good v.*

Boyle, 67 Idaho 512, 186 P.2d 859 (1947); *State ex rel. Good v. Holmes*, 67 Idaho 525, 186 P.2d 867 (1947); *State ex rel. Good v. Evans*, 67 Idaho 526, 186 P.2d 868 (1947); *State ex rel. Good v. Hansen*, 67 Idaho 528, 186 P.2d 869 (1947).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 359 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 622, 627, 633.

23-709. Disposition of proceeds of sale. — The proceeds of the sale of the movable property shall be applied in payment of the costs of the proceeding and of the abatement, and the balance, if any, shall be paid to the defendant or person owning said property upon the return of such sale. [1939, ch. 222, § 1009, p. 465.]

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 554 et seq., 590.

23-710. Violation of injunction and order of abatement a contempt. — In case of the violation of any injunction or order of abatement issued under the provisions of this article, the court, or a judge at chambers, may summarily try and punish the offender for his contempt of court. [1939, ch. 222, § 1010, p. 465.]

STATUTORY NOTES

Compiler's Notes. — For words "this article", see Compiler's Notes, § 23-701.

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 375.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 628-631.

23-711. Release of building from injunction. — If the owner of such building or place has not been guilty of any contempt of court in the proceeding, and pays all costs of the proceeding and of the abatement and files a bond, with sureties to be approved by the court, in the penal sum of the full value of the property, to be ascertained by the court, or by a judge at chambers, conditioned that such owner will immediately abate such nuisance and prevent the same from being established or maintained therein within a period of one (1) year thereafter, the court shall vacate such decree and order of abatement, so far as the same may relate to such building or place, and shall also vacate the order directing the sale of the movable property. The release herein provided for shall not release such property from any judgment, lien, penalty, or liability to which it may otherwise be subject by law. [1939, ch. 222, § 1011, p. 465.]

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 391 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 593 et seq.

23-712. Costs a lien. — Whenever the costs shall be assessed under the provisions of this chapter against the owner of any property declared to be a liquor nuisance, such costs shall constitute a lien upon such property to the extent of the interest of such owner, and writ of execution shall issue thereon. [1939, ch. 222, § 1012, p. 465.]

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 411, 412, 633.

CHAPTER 8

ENFORCEMENT OF PENAL AND ABATEMENT PROVISIONS OF IDAHO LIQUOR ACT

SECTION.

- 23-801. Primary duty of enforcement.
- 23-802. Supervisory duty of attorney general.
- 23-803. Attorney general may act as prosecutor.
- 23-804. Duties of the Idaho state police and officers thereof.
- 23-805. Duties of prosecuting attorneys, sheriffs, and other officers.

SECTION.

- 23-806. [Repealed.]
- 23-807. Compelling attendance of witnesses — Immunity of witnesses — Authority of enforcement officers.
- 23-808. Legislative finding and intent — Cause of action.

23-801. Primary duty of enforcement. — The penal provisions of this act shall be deemed to be an integral part of the penal code of this state and the sheriffs of the several counties and local peace officers are charged with the primary duty of enforcing such provisions; and the prosecuting attorneys of the several counties are charged with the primary duty of prosecuting violators thereof in penal actions and abatement proceedings. [1939, ch. 222, § 1101, p. 465.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-101.
Sections 23-801 to 23-803 comprised article

11 of the Idaho Liquor Act as originally enacted, headed "Enforcement of Penal and Abatement Provisions."

23-802. Supervisory duty of attorney general. — If any prosecuting attorney, sheriff or local peace officer is guilty of nonfeasance, misfeasance or malfeasance in respect to his duties under this act, the attorney general of the state shall proceed against said offender in ouster or removal proceedings under chapter 41 of title 19, [Idaho Code,] or as may be otherwise provided by law. [1939, ch. 222, § 1102, p. 465.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-101.

The bracketed insertion was added by the compiler.

23-803. Attorney general may act as prosecutor. — The attorney general shall, in every county in the state, have the same powers as the prosecuting attorney thereof with respect to the prosecution of criminal actions and abatement proceedings under this act. [1939, ch. 222, § 1103, p. 465.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-101.

23-804. Duties of the Idaho state police and officers thereof. — The Idaho state police and the director thereof are hereby charged with the responsibility and duty of assisting in the policing of the state of Idaho to enforce and require the enforcement of the penal provisions of the Idaho liquor act in addition to other duties imposed upon them by law, notwithstanding the duties now, or which may be hereafter imposed upon sheriffs, police, or other officers to enforce the provisions of such laws. To accomplish such enforcement it is hereby made the duty of said director and every officer of the Idaho state police, whether employed specifically for the enforcement of the liquor act, or otherwise, to officially report every violation of such liquor act of which they have knowledge, or which is made known to them, to the sheriff, and prosecuting attorney of the respective county or counties in which such violations occur and sign complaints for such violations, which complaints said prosecuting attorney, sheriff, and other officers shall faithfully prosecute.

Said Idaho state police under the direction of the director thereof shall conduct investigations to obtain facts involving violations of the provisions of such laws and the said director shall appoint a chief of enforcement of such laws and may employ expert investigators, detectives, and secret officers to obtain such information and assist in such policing and enforcement. [1939, ch. 222, § 1104, as added by 1943, ch. 175, § 1, p. 369; am. 1974, ch. 27, § 13, p. 811; am. 2000, ch. 469, § 58, p. 1450.]

STATUTORY NOTES

Cross References. — Idaho liquor act, § 23-101 et seq.

23-805. Duties of prosecuting attorneys, sheriffs, and other officers. — It shall be the duty of the director of the division and every prosecuting attorney, sheriff, police or other peace officer to cooperate with the Idaho state police in the enforcement of such laws, and any such officer refusing to so cooperate or divulge any information he may have in any such prosecution shall be subject to action against him as provided in chapter 41, title 19, Idaho Code. Any such action may be brought in the name of the state of Idaho by any resident of the county, or officer of the state or county. Upon the conviction of a person for a violation of the provisions of the Idaho liquor act, or of the provisions of chapter 9, title 23, Idaho Code, the judge of the court imposing the judgment of conviction shall immediately send to the director of the Idaho state police a statement setting forth the title of the court, the name and residence of the defendants, the nature of the offense and the fine and sentence or judgment imposed. [1939, ch. 222, § 1105, as added by 1943, ch. 175, § 2, p. 369; am. 1950 (E.S.), ch. 14, § 1, p. 25; am. 1974, ch. 27, § 14, p. 811; am. 1999, ch. 103, § 2, p. 327; am. 2000, ch. 469, § 59, p. 1450; am. 2009, ch. 23, § 52, p. 53.]

STATUTORY NOTES

Cross References. — Idaho liquor act, § 23-101 et seq. by ch. 23, in the first sentence, substituted “director” for “superintendent” and “division” for “state liquor dispensary.”

23-806. Liquor law enforcement account — Source — Appropriation — Purposes for which used. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — This section, which comprised (1939, ch. 222, § 1106, as added by 1943, ch. 175, § 3, p. 369; am. 1947, ch. 184, § 1, p. 448; am. 1950 (E.S.), ch. 14, § 2, p. 25; am. 1951, ch. 260, § 1, p. 559; am. 1982, ch. 255, § 5, p. 653; am. 1983, ch. 184, § 1, p. 499), was repealed by S.L. 1984, ch. 120, § 2.

23-807. Compelling attendance of witnesses — Immunity of witnesses — Authority of enforcement officers. — The director of the Idaho state police and any prosecuting attorney of any county, for the purposes contemplated by this act, have power to issue subpoenas, compel the

attendance of witnesses, administer oaths, certify to official acts, take depositions within and without the state of Idaho, as now provided by law, compel the production of pertinent books, payrolls, accounts, papers, records, documents and testimony. If a person in attendance before such director or prosecuting attorney refuses, without reasonable cause, to be examined or to answer a legal and pertinent question, or to produce a book or paper or other evidence when ordered so to do by the director or prosecuting attorney, said director or prosecuting attorney may apply to the judge of the district court of the county where such person is in attendance, upon affidavit for an order returnable not less than two (2) or more than five (5) days, directing such person to show cause before such judge, or any other judge of such district, why he should not be punished for contempt; upon the hearing of such order, if the judge shall determine that such person has refused, without reasonable cause or legal excuse, to be examined or to answer a legal or pertinent question, or to produce a book or paper which he was ordered to bring or produce, he may forthwith punish the offender as for contempt of court.

No person shall be excused from testifying or from producing any books or papers or documents in any investigation or inquiry by or upon any hearing before any officer so authorized upon the ground that the testimony or evidence, books, papers or documents required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which he shall, under oath, have, by order of the said officer, testified to or produced documentary evidence of; provided, however, that no person so testifying shall be exempt from prosecution or punishment for any perjury testified by him.

Subpoenas shall be served and witness fees and mileage paid as allowed in civil cases in the district courts of this state.

Inspectors and investigators employed by the Idaho state police for the enforcement of this act shall have all the authority given by statute to peace officers of the state of Idaho, including authority to serve and execute warrants of arrest and warrants of search and seizure. [1939, ch. 222, § 1107, as added by 1943, ch. 175, § 4, p. 369; am. 1974, ch. 27, § 15, p. 811; am. 2000, ch. 469, § 60, p. 1450.]

STATUTORY NOTES

Cross References. — Arrests, § 19-501 et seq.

Searches and seizures, § 19-4401 et seq.

Witness fees and mileage, § 9-1601 et seq.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-101.

Effective Dates. — Section 196 of S.L. 1974, ch. 27, provided the act should take effect on and after July 1, 1974.

23-808. Legislative finding and intent — Cause of action. —

(1) The legislature finds that it is not the furnishing of alcoholic beverages that is the proximate cause of injuries inflicted by intoxicated persons and it is the intent of the legislature, therefore, to limit dram shop and social

host liability; provided, that the legislature finds that the furnishing of alcoholic beverages may constitute a proximate cause of injuries inflicted by intoxicated persons under the circumstances set forth in subsection (3) of this section.

(2) No claim or cause of action may be brought by or on behalf of any person who has suffered injury, death or other damage caused by an intoxicated person against any person who sold or otherwise furnished alcoholic beverages to the intoxicated person, except as provided in subsection (3) of this section.

(3) A person who has suffered injury, death or any other damage caused by an intoxicated person, may bring a claim or cause of action against any person who sold or otherwise furnished alcoholic beverages to the intoxicated person, only if:

(a) The intoxicated person was younger than the legal age for the consumption of alcoholic beverages at the time the alcoholic beverages were sold or furnished and the person who sold or furnished the alcoholic beverages knew or ought reasonably to have known at the time the alcoholic beverages were sold or furnished that the intoxicated person was younger than the legal age for consumption of the alcoholic beverages; or

(b) The intoxicated person was obviously intoxicated at the time the alcoholic beverages were sold or furnished, and the person who sold or furnished the alcoholic beverages knew or ought reasonably to have known that the intoxicated person was obviously intoxicated.

(4)(a) No claim or cause of action pursuant to subsection (3) of this section shall lie on behalf of the intoxicated person nor on behalf of the intoxicated person's estate or representatives.

(b) No claim or cause of action pursuant to subsection (3) of this section shall lie on behalf of a person who is a passenger in an automobile driven by an intoxicated person nor on behalf of the passenger's estate or representatives.

(5) No claim or cause of action may be brought under this section against a person who sold or otherwise furnished alcoholic beverages to an intoxicated person unless the person bringing the claim or cause of action notified the person who sold or otherwise furnished alcoholic beverages to the intoxicated person within one hundred eighty (180) days from the date the claim or cause of action arose by certified mail that the claim or cause of action would be brought.

(6) For the purposes of this section, the term "alcoholic beverage" shall include alcoholic liquor as defined in section 23-105, Idaho Code, beer as defined in section 23-1001, Idaho Code, and wine as defined in section 23-1303, Idaho Code. [I.C., § 23-808, as added by 1986, ch. 285, § 1, p. 708.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1986, ch. 285 declared an emergency. Approved April 3, 1986.

JUDICIAL DECISIONS

ANALYSIS

Applicability.
 Constitutionality.
 Legislative power.
 Right to jury.

Applicability.

A cause of action did lie against a licensed vendor of spirits for negligently continuing to serve alcoholic beverages to an obviously intoxicated adult which arose prior to the enacting of this section but shall apply prospectively, that is, only to this case and other causes of action arising subsequent to September 20, 1985. *Bergman v. Henry*, 115 Idaho 259, 766 P.2d 729 (1988).

Order granting partial summary judgment holding that comparative negligence did not apply to a claim brought under this section was reversed where the Dram Shop Act addressed proximate cause, not duty or breach of duty. *Dep't of Labor v. Sunset Marts, Inc.*, 140 Idaho 207, 91 P.3d 1111 (2004).

In claim by parents of minor passenger injured in single vehicle accident against store that sold alcohol to obviously intoxicated driver, parents' argument that their son was not legally a "person" was rejected. Paragraph (4)(b) by its terms applies to all persons who are passengers, regardless of their ages. *Mc Lean v. Maverik Country Stores, Inc.*, 142 Idaho 810, 135 P.3d 756 (2006).

Constitutionality.

The disparate treatment of intoxicated persons under this provision is not unconstitutional in that it is rationally related to the legitimate governmental purposes of limiting dram shop and social host liability and discouraging irresponsible consumption of alcohol. *Coghlan v. Beta Theta Pi Fraternity*, 133 Idaho 388, 987 P.2d 300 (1999).

The city ordinance which provided that no license issued by the city to sell beer or wine should be renewed if the applicant had been convicted of driving a motor vehicle under the influence of alcohol, drugs or any other intoxicating substances within five (5) years prior to the date of the making of the application for license was constitutional, because if a retail

seller of alcohol has been unable or unwilling to recognize when he himself was too intoxicated to be driving a motor vehicle, the city could reasonably conclude that he would not use sufficient care to refrain from selling beer and wine to intoxicated customers. *Sanchez v. City of Caldwell*, 135 Idaho 465, 20 P.3d 1 (2001).

Paragraph (4)(b) does not violate the equal protection guarantee of the United States or Idaho Constitutions because there are conceivable facts that would support the legislative classification under the rational basis test. *Mc Lean v. Maverik Country Stores, Inc.*, 142 Idaho 810, 135 P.3d 756 (2006).

Legislative Power.

Although the legislature has generally espoused the comparative negligence approach for negligence actions, because it is not precluded from limiting or rejecting the application of that approach in actions arising out of particular circumstances its enactment of a statutory bar to an action by an intoxicated person against the provider of alcohol was within its constitutional powers. *Coghlan v. Beta Theta Pi Fraternity*, 133 Idaho 388, 987 P.2d 300 (1999).

Right to Jury.

Since the claimed cause of action, alcohol provider liability for injury suffered by the intoxicated person to whom the alcohol was provided, did not exist at common law at the time the state constitution was adopted, the right to have a jury determine the merits of such a case is not protected by the constitution. *Coghlan v. Beta Theta Pi Fraternity*, 133 Idaho 388, 987 P.2d 300 (1999).

Cited in: *Slade v. Smith's Mgt. Corp.*, 119 Idaho 482, 808 P.2d 401 (1991); *Mitchell v. Valerio*, 124 Idaho 283, 858 P.2d 822 (Ct. App. 1993); *Reed v. Foster*, 130 Idaho 74, 936 P.2d 1316 (1997).

CHAPTER 9

RETAIL SALE OF LIQUOR BY THE DRINK

SECTION.

- 23-901. Declaration of policy — Retail sale of liquor.
- 23-902. Definitions.
- 23-903. License to retail liquor.
- 23-903a. License to retail liquor — Ski re-

SECTION.

- sorts — Cross-country skiing facilities.
- 23-903b. Licenses issued to owners, operators or lessees of golf courses, ski resorts, cross-country ski-

SECTION.

- ing facilities and waterfront resorts — Limitations on sales or transfers.
- 23-904. License fees.
- 23-905. Application for licenses — Penalty for false statements.
- 23-906. Licenses for dining, buffet and club cars, common carrier boats, and common carrier airlines.
- 23-907. Investigation of applications.
- 23-908. Form of license — Authority — Expiration — Limitations.
- 23-909. [Repealed.]
- 23-910. Persons not qualified to be licensed.
- 23-911. Restrictions on manufacturers, transporters or distillers.
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- 23-913. Licensee not allowed near churches or schools — Exceptions.
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- 23-916. County and city licenses.
- 23-917. Referendum — Local option. [Effective until January 1, 2011.]
- 23-917. Referendum — Local option. [Effective January 1, 2011.]
- 23-918. Form of ballot. [Effective until January 1, 2011.]
- 23-918. Form of ballot. [Effective January 1, 2011.]
- 23-919. Effect of election — Liquor store sales not affected. [Effective until January 1, 2011.]
- 23-919. Effect of election — Liquor store sales not affected. [Effective January 1, 2011.]
- 23-920. Subsequent elections.
- 23-921. No retail sale except by the drink.
- 23-922 — 23-925a. [Repealed.]
- 23-926. Destruction of stamps — Sanitary requirements.
- 23-927. Hours of sale of liquor.
- 23-928. Sale away from licensed premises prohibited — Gambling prohibited.
- 23-929. [Repealed.]
- 23-930. Officers may examine premises.
- 23-931. Advertising prohibited.
- 23-932. Director to make regulations — Furnish forms and records.

SECTION.

- 23-933. Suspension, revocation, and refusal to renew licenses.
- 23-933A. Licenses — Suspension or revocation for violation of obscenity laws.
- 23-933B. Procedure for other licensing authorities.
- 23-934. Unlicensed rooms unlawful — Exception.
- 23-934A. Alcohol beverage catering permit — Application.
- 23-934B. Filing of application — Approval.
- 23-934C. Regulatory and penalty provisions applicable.
- 23-935. Violation — Misdemeanors.
- 23-936. Duty of public officers.
- 23-937. Violation a moral nuisance.
- 23-938. Selling liquor without license — Penalty.
- 23-939. Separability.
- 23-940. Disposition of funds.
- 23-941. Declaration of public policy.
- 23-942. Definitions.
- 23-943. Persons under specified ages forbidden to enter, remain in or loiter at certain licensed places.
- 23-943A. Identification.
- 23-944. Exceptions from restriction on entering or remaining.
- 23-945. Posting signs as to restriction.
- 23-946. Statement made by licensees of premises operated as restaurants — Indorsement upon license.
- 23-947. Violations of act a misdemeanor.
- 23-948. Waterfront resorts — Licensing even if outside corporate limits of city.
- 23-949. Persons not allowed to purchase, possess, serve, dispense, or consume beer, wine or other alcoholic liquor.
- 23-950. Restriction against transfer of license.
- 23-951. Distilled spirits fuels.
- 23-952. Cross-country skiing facility — Licensing even if outside corporate limits of city.
- 23-953. Racing facilities — Licensing.
- 23-954. Theme parks — Licensing.
- 23-955. Split ownership facility — Licensing.
- 23-956. Continuation of golf course liquor license following change of land use.
- 23-957. Year-round [resort] liquor license.

23-901. Declaration of policy — Retail sale of liquor. — It is hereby declared as the policy of the state of Idaho that it is necessary to further regulate and control the sale and distribution within the state of alcoholic beverages and to eliminate certain illegal traffic in liquor now existing and to insure the entire control of the sale of liquor it is advisable and necessary, in addition to the operation of the state liquor stores now provided by law, that the director of the Idaho state police and the county commissioners and the

councils of cities in the state of Idaho be empowered and authorized to grant licenses to persons qualified under this act to sell liquor purchased by them at state liquor stores at retail posted prices in accordance with this act and under the rules promulgated by said director and under his strict supervision and control and to provide severe penalty for the sale of liquor except by and in state liquor stores and by persons licensed under this act. The restrictions, rules, and provisions contained in this act are enacted by the legislature for the protection, health, welfare and safety of the people of the state of Idaho and for the purpose of promoting and encouraging temperance in the use of alcoholic beverages within the state of Idaho. [1947, ch. 274, § 1, p. 870; am. 1974, ch. 27, § 16, p. 811; am. 2000, ch. 469, § 61, p. 1450.]

STATUTORY NOTES

Cross References. — Power of legislature to regulate or prohibit sale, Const., Art. III, § 26.

Compiler's Notes. — The words "this act" refer to S.L. 1947, ch. 274, compiled as §§ 23-

901 to 23-903, 23-904 to 23-908, 23-910 to 23-921, 23-926 to 23-928, 23-930 to 23-932, and 23-935 to 23-940. Probably, the reference should be to "this chapter", being chapter 9, title 23, Idaho Code.

JUDICIAL DECISIONS

ANALYSIS

Construction.

Failure to apply for license.

Indictment and information.

Notice period.

— Computation.

Purpose of act.

Rights under license.

Construction.

While this act does not directly repeal § 23-602, it is clear and definite that the legislature intended to change the penalty for the unlawful sale of liquor. *State v. Teninty*, 70 Idaho 1, 212 P.2d 412 (1949).

Act providing for issuance of liquor licenses must be construed as a whole in determining whether effect of negative local option election automatically terminates license, or whether license remain in effect until its expiration date. *Nampa Lodge No. 1389 Benevolent & Protective Order of Elks v. Smylie*, 71 Idaho 212, 229 P.2d 991 (1951).

Failure to Apply for License.

Defendants' failure to apply for retail licenses did not destroy their standing to challenge the constitutionality of the statutes charging them with the felony of selling intoxicating liquors without a license. *State v. Cantrell*, 94 Idaho 653, 496 P.2d 276 (1972).

Indictment and Information.

An information which charges that the defendant sold intoxicating liquor while "without a license as provided by title 23, chapter 9, Idaho Code" is sufficient to charge the defendant with selling at retail and to identify the particular

kind of license he failed to have. *State v. Grady*, 89 Idaho 204, 404 P.2d 347 (1965).

Notice Period.

— Computation.

Intervening weekend days must be included in computing the ten-day notice period for liquor license applicant to notify alcohol beverage control division of one's intention to accept the license. *Young v. Idaho Dep't of Law Enforcement*, 123 Idaho 870, 853 P.2d 615 (Ct. App. 1993).

Purpose of Act.

It was not the purpose of the legislature in enacting this act to establish a right of action for sale of intoxicants to an intoxicated person, which was nonexistent at common law. *Meade v. Freeman*, 93 Idaho 389, 462 P.2d 54 (1969).

This statute reflects a legitimate public purpose which is an exercise of the state's sovereign police power. *State v. Cantrell*, 94 Idaho 653, 496 P.2d 276 (1972).

Rights Under License.

In light of § 23-908, rights under a liquor license are inseverable parts of a complete interest and a "premises interest" may not be

created in a person other than the named licensee in contravention to statutory policy. *Uptick Corp. v. Ahlin*, 103 Idaho 364, 647 P.2d 1236 (1982).

Cited in: *State v. Garde*, 70 Idaho 86, 212 P.2d 655 (1949); *State ex rel. Summers v.*

Lake Tavern, Inc., 76 Idaho 111, 278 P.2d 192 (1954); *McBride v. Hopper*, 84 Idaho 350, 372 P.2d 401 (1962); *Weller v. Hopper*, 85 Idaho 386, 379 P.2d 792 (1963); *Adams v. Department of Law Enforcement*, 99 Idaho 255, 580 P.2d 858 (1978).

23-902. Definitions. — The following words and phrases used in this chapter shall be given the following interpretation:

(1) “Club” includes any of the following organizations where the sale of spirituous liquor for consumption on the premises is made to members and to bona fide guests of members only:

(a) A post, chapter, camp or other local unit composed solely of veterans and their duly recognized auxiliary, and which is a post, chapter, camp or other local unit composed solely of veterans which has been chartered by the congress of the United States for patriotic, fraternal or benevolent purposes, and which has, as the owner, lessee or occupant, operated an establishment for that purpose in this state; or

(b) A chapter, aerie, parlor, lodge or other local unit of an American national fraternal organization, which has as the owner, lessee or occupant, operated an establishment for fraternal purposes in this state and actively operates in not less than thirty-six (36) states or has been in continuous existence for not less than twenty (20) years; and which has not less than fifty (50) bona fide members in each unit, and which owns, maintains or operates club quarters, and is authorized and incorporated to operate as a nonprofit club under the laws of this state, and which has recognized tax exempt status under section 501(c)(8) or 501(c)(10) of the Internal Revenue Code, and has been continuously incorporated and operating for a period of not less than one (1) year. The club shall have had during that period of one (1) year, a bona fide membership with regular meetings conducted at least once each month, and the membership shall be and shall have been actively engaged in carrying out the objects of the club. The club membership shall consist of bona fide dues paying members, recorded by the secretary of the club, paying at least six dollars (\$6.00) per year in dues, payable monthly, quarterly or annually; and the members at the time of application for a club license shall be in good standing, having paid dues for at least one (1) full year.

(2) “Convention” means a formal meeting of members, representatives, or delegates, as of a political party, fraternal society, profession or industry.

(3) “Director” means the director of the Idaho state police.

(4) “Gaming” means any and all gambling or games of chance defined in chapters 38 and 49, title 18, Idaho Code, or any section or sections thereof, whether those games are licensed or unlicensed.

(5) “Interdicted person” means a person to whom the sale of liquor is prohibited under law.

(6) “License” means a license issued by the director to a qualified person, under which it shall be lawful for the licensee to sell and dispense liquor by the drink at retail, as provided by law.

(7) “Licensee” means the person to whom a license is issued under the provisions of law.

(8) "Liquor" means all kinds of liquor sold by and in a state liquor store of the state of Idaho.

(9) "Live performance" means a performance occurring in a theater and not otherwise in violation of any provision of Idaho law.

(10) "Municipal license" means a license issued by a municipality of the state of Idaho under the provisions of law.

(11) "Party" means a social gathering especially for pleasure or amusement and includes, but is not limited to, such social events as weddings, birthdays, and special holiday celebrations to include, but not be limited to, New Year's celebrations, Super Bowl Sunday, St. Patrick's Day, the Fourth of July and Labor Day.

(12) "Person" means every individual, partnership, corporation, organization, or association holding a retail liquor license, whether conducting the business singularly or collectively.

(13) "Premises" means the building and contiguous property owned, or leased or used under a government permit by a licensee as part of the business establishment in the business of sale of liquor by the drink at retail, which property is improved to include decks, docks, boardwalks, lawns, gardens, golf courses, ski resorts, courtyards, patios, poolside areas or similar improved appurtenances in which the sale of liquor by the drink at retail is authorized under the provisions of law.

(14) "Rules" means rules promulgated by the director in accordance with the provisions of law.

(15) "State liquor store" means a liquor store or distributor established under and pursuant to the laws of the state of Idaho for the package sale of liquor at retail.

(16) "Theater" means a room, place or outside structure for performances or readings of dramatic literature, plays or dramatic representations of an art form not in violation of any provision of Idaho law.

(17) All other words and phrases used in this chapter, the definitions of which are not herein given, shall be given their ordinary and commonly understood and acceptable meanings. [1947, ch. 274, § 2, p. 870; am. 1949, ch. 276, § 1, p. 565; am. 1974, ch. 27, § 17, p. 811; am. 1978, ch. 44, § 1, p. 78; am. 1983, ch. 203, § 1, p. 551; am. 1986, ch. 36, § 1, p. 118; am. 1999, ch. 58, § 1, p. 146; am. 2000, ch. 469, § 62, p. 1450; am. 2003, ch. 111, § 1, p. 348.]

STATUTORY NOTES

Federal References. — Section 501(c)(8) referred to in subdivision (1)(b), is compiled as or (c)(10) of the Internal Revenue Code, re- 26 U.S.C. § 501(c)(8), (10).

JUDICIAL DECISIONS

ANALYSIS

Indictment and information.
Premises.

Indictment and Information.

The failure of any information charging sale of liquor without a license to specify that

the liquor sold was one dispensed by or in the state liquor store cannot be considered a fatal defect, because the gravamen of the offense,

as defined by § 23-938, is the sale of any liquor without a license. *State v. Grady*, 89 Idaho 204, 404 P.2d 347 (1965).

Premises.

Landing located immediately adjacent to entry of bar and staffed by a bouncer checking for identification constituted part of a "premises licensed to sell liquor or beer," giving a police officer statutory authority to request

identification from defendant. When defendant refused to produce this identification, officer could legally arrest him and search him incident to that arrest, and drugs found on his person during that search were admissible. *State v. Conant*, 143 Idaho 797, 153 P.3d 477 (2007).

Cited in: *Uptick Corp. v. Ahlin*, 103 Idaho 364, 647 P.2d 1236 (1982).

23-903. License to retail liquor. — The director of the Idaho state police is hereby empowered, authorized, and directed to issue licenses to qualified applicants, as herein provided, whereby the licensee shall be authorized and permitted to sell liquor by the drink at retail and, upon the issuance of such license, the licensee therein named shall be authorized to sell liquor at retail by the drink, but only in accordance with the rules promulgated by the director and the provisions of this chapter. No license shall be issued for the sale of liquor on any premises outside the incorporated limits of any city except as provided in this chapter and the number of licenses so issued for any city shall not exceed one (1) license for each one thousand five hundred (1,500) of population of said city or fraction thereof, as established in the last preceding census, or any subsequent special census conducted by the United States bureau of the census or by an estimate that is statistically valid including adding the number of new residential utility connections or including adding the population of areas annexed into the city after the last census or special census was conducted, except that upon proper application thereof not more than two (2) licenses may be issued for each incorporated city with a population of one thousand five hundred (1,500) or less, unless the retail licensing of liquor by the drink has been previously disapproved under the provisions of sections 23-917, 23-918, 23-919, 23-920 and 23-921, Idaho Code; provided, however, that any license heretofore issued may be renewed from year to year without regard to the population or status of the city for which such license is issued. Any license issued and which has remained in effect at its location for a consecutive period of ten (10) years or more shall be deemed to have been validly issued and may be renewed from year to year provided, however, that the applicant for the renewal of such license is not otherwise disqualified for licensure pursuant to section 23-910, Idaho Code, and, if the premises required special characteristics for original licensure, other than being either within or without the incorporated limits of a city, that said premises continue to have such special characteristics at the time of the application for renewal.

Nothing herein contained shall prohibit the issuance of a license to the owner, operator, or lessee of an actual, bona fide golf course whether located within or without the limits of any city, or located on premises also operated as a winery, or ski resort, or to the lessee of any premises situate thereon, whether located within or without the limits of any city. For the purpose of this section a golf course shall comprise an actual, bona fide golf course, which is regularly used for the playing of the game of golf, and having not less than nine (9) tees, fairways and greens laid out and used in the usual

and regular manner of a golf course. Nine (9) hole courses must have a total yardage of at least one thousand (1,000) yards, and eighteen (18) hole courses must have a total yardage of at least two thousand (2,000) yards as measured by totaling the tee-to-green distance of all holes. The course must be planted in grass except that it may provide artificial tee mats. Where any such golf course is owned or leased by an association of members and is used or enjoyed by such members, or their guests, none of the disqualifications contained in section 23-910, Idaho Code, shall apply to such association as a licensee where such disqualifications, or any of them, would apply only to a member of such association where such member has no interest therein except as a member thereof.

Also for the purpose of this section a ski resort shall comprise real property of not less than ten (10) acres in size, exclusive of the terrain used for skiing and upon which the owner, operator, or lessee of the ski resort has made available himself, or through others, including, but not limited to, the owners of condominiums, permanent bona fide overnight accommodations available to the general public for one hundred (100) persons or more, and which real property is contiguous to or located within the area in which skiing occurs, and which real property is regularly operated as a ski resort in the winter time, and where the owner, operator, or lessee of the ski resort is also the owner, operator, or lessee of the area served by a bona fide chair ski lift facility or facilities. Alternatively, for the purpose of this section a ski resort may also be defined as a downhill ski area, open to the public, comprising real property of not less than two hundred fifty (250) skiable acres, operating two (2) or more chair lifts with a vertical lift of one thousand (1,000) feet or more, and capable of transporting a minimum of one thousand eight hundred (1,800) skiers per hour. A ski resort qualifying under this definition shall also have on the premises a lodge facility providing shelter and food service to the public, the operator of which shall also be the valid owner or lessee of the grounds and facilities upon which the ski resort offers downhill skiing services to the public. The fees for licenses granted to ski resorts shall be the same as those prescribed for golf courses as set forth in section 23-904, Idaho Code. Not more than one (1) licensed premises shall be permitted on any golf course or any ski resort or within the area comprising the same.

Nothing herein contained shall prohibit the issuance of a license to the owner, operator or lessee of an actual, bona fide equestrian facility located on not less than forty (40) contiguous acres, with permanently erected seating of not less than six thousand (6,000) seats, no part of which equestrian facility or the premises thereon is situate within the incorporated limits of any city, and which facility shall have at least three (3) days per year of a professionally sanctioned rodeo. Not more than one (1) licensed premises shall be permitted at any equestrian facility or within an area comprising such a facility. The license shall be solely for the equestrian facility and shall not be transferred to any other location. The fees for licenses granted to equestrian facilities shall be the same as those prescribed for golf courses as set forth in section 23-904, Idaho Code.

Nothing herein contained shall prohibit the issuance of a license to the owner, operator, or lessee of a restaurant operated on an airport owned or

operated by a county or municipal corporation or on an airport owned or operated jointly by a county and municipal corporation, and which said airport is served by a trunk or local service air carrier holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board of the United States of America. Not more than one (1) license shall be issued on any airport.

Nothing herein contained shall prohibit the issuance of one (1) club license to a club as defined in section 23-902, Idaho Code. The holder of a club license is authorized to sell and serve alcoholic beverages for consumption only within the licensed establishment owned, leased or occupied by the club, and only to bona fide members of the club, and to serve and to sell alcoholic beverages for consumption to bona fide members' guests. A club license issued pursuant to the provisions of this section is not transferable and may not be sold. Any club license issued pursuant to the provisions of this section will revert to the director when, in his judgment, the licensee ceases to operate as a bona fide club as defined in section 23-902, Idaho Code. No club may hold a liquor license and a club license simultaneously. A club which on July 1, 1983, holds a liquor license, may continue to possess that license. Any club which possesses a liquor license on January 1, 1983, or thereafter, and then sells that liquor license, may not obtain a club license, and the director shall not issue a club license to that club for a period of five (5) years following such sale. The fee for any license issued to a qualifying club within an incorporated municipality shall be as prescribed in subsections (1), (2) and (3) of section 23-904, Idaho Code. The fee for any license issued to a qualifying club not situate within an incorporated municipality shall be as specified for golf courses under section 23-904(6), Idaho Code. The provisions of section 23-916, Idaho Code, regarding county and city licenses, shall pertain to club licenses. The burden of producing sufficient documentation of qualifications for club licensure shall be with the club applicant.

Nothing in this chapter to the contrary shall prohibit the issuance of a license to the owner, operator, or lessee of an actual, bona fide convention center which is within the incorporated limits of a city having a population of three thousand (3,000) or greater, and which city does not have located therein a convention center with a valid convention center license to sell liquor by the drink. For the purpose of this section, a convention center means a facility having at least thirty-five thousand (35,000) square feet of floor space or a facility having at least one hundred twenty (120) sleeping rooms and an adjoining meeting room which will accommodate not less than three hundred fifty (350) persons, whether or not such room may be partitioned into smaller rooms, and provided that such meeting room shall contain at least three thousand (3,000) square feet of floor space. Such license must be placed in actual use in said convention center within one (1) year from the date of its issuance. The fee for any license issued to a qualifying convention center shall be as prescribed in subsection (3) of section 23-904, Idaho Code. No license issued to a convention center hereunder shall be transferable to another location or facility, nor shall the holder of a convention center license be eligible for the issuance of a license

in the same city pursuant to any other provision of this chapter. For purposes of this section, the term holder shall include an owner, operator or lessee and shall include a stockholder, director, or officer of a corporation, or a partner in a partnership, which corporation or partnership has been issued a convention center license pursuant to this chapter. Not more than one (1) licensed premises shall be permitted on any convention center or within the area comprising the same, including convention centers that also comprise golf courses or ski resorts as herein defined.

Nothing in this chapter shall prohibit the issuance of a license to the owner, operator or lessee of a food, beverage and/or lodging facility that has been in continuous operation in the same location for at least seventy-five (75) years, except for temporary closings for refurbishing or reconstruction, or a food, beverage and lodging facility serving the public by reservation only, having a minimum of five (5) rooms operating in a structure that has been in existence for at least seventy-five (75) years and has been on the historic register for a minimum of ten (10) years, is situated within five hundred (500) yards of a natural lake containing a minimum of thirty-six thousand (36,000) acre feet of water when full with a minimum of thirty-two (32) miles of shoreline, and is located in a county with a minimum population of sixty-five thousand (65,000). The provisions of section 23-910, Idaho Code, shall apply to licenses issued to continuous operation facilities. The fees shall be the same as those prescribed for golf courses as set forth in section 23-904, Idaho Code. Licenses issued to continuous operation facilities are not transferable.

Nothing in this chapter shall prohibit the issuance of a license to the owner, operator or lessee of the lodging, dining and entertainment facilities owned by a gondola resort complex and operated in conjunction with the other public services provided by a gondola resort complex located within the ownership/leasehold boundaries of a gondola resort complex.

A gondola resort complex means an actual, bona fide gondola capable of transporting people for recreational and/or entertainment purposes at least three (3) miles in length with a vertical rise of three thousand (3,000) feet, portions of which may be located within or over the limits of one (1) or more cities.

Nothing in this chapter shall prohibit the issuance of a license to the owner, operator or lessee of a winery also operating a golf course on the premises.

Subject to approval of the mayor and city council, nothing in this chapter shall prohibit the issuance of a license to the owner, operator or lessee of a food, conference and lodging facility constructed after May 1, 2000, containing a minimum of thirty-five thousand (35,000) square feet and fifty-five (55) guest rooms with a minimum taxable value of three million dollars (\$3,000,000) in a city with a population of less than five thousand (5,000) according to the most recent census.

The provisions of section 23-910, Idaho Code, shall apply to licenses issued under the provisions of this section. The fees shall be the same as those prescribed for golf courses as set forth in section 23-904, Idaho Code. Licenses issued under the provisions of this section are not transferable.

[1947, ch. 274, § 3, p. 870; am. 1957, ch. 151, § 1, p. 250; am. 1959, ch. 118, § 1, p. 254; am. 1963, ch. 215, § 1, p. 622; am. 1965, ch. 35, § 1, p. 52; am. 1972, ch. 34, § 1, p. 53; am. 1974, ch. 27, § 18, p. 811; am. 1978, ch. 126, § 2, p. 285; am. 1983, ch. 167, § 1, p. 473; am. 1983, ch. 203, § 2, p. 551; am. 1984, ch. 244, § 1, p. 590; am. 1989, ch. 164, § 1, p. 411; am. 1989, ch. 207, § 1, p. 507; am. 1989, ch. 301, § 1, p. 749; am. 1990, ch. 252, § 1, p. 722; am. 1990, ch. 255, § 1, p. 729; am. 1990, ch. 392, § 1, p. 1098; am. 1992, ch. 233, § 1, p. 697; am. 1993, ch. 240, § 1, p. 845; am. 1995, ch. 358, § 1, p. 1214; am. 1996, ch. 349, § 1, p. 1167; am. 1997, ch. 263, § 1, p. 749; am. 2000, ch. 469, § 63, p. 1450; am. 2004, ch. 44, § 1, p. 165; am. 2006, ch. 449, § 3, p. 1333; am. 2008, ch. 335, § 1, p. 920; am. 2008, ch. 405, § 1, p. 1110.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 449, updated subsection references in the sixth paragraph.

This section was amended by two 2008 acts which appear to be compatible and have been compiled together.

The 2008 amendment, by ch. 335, in the first sentence in the second paragraph, substituted “whether located within or without the limits of the city” for “no part of which ski resort or the premises thereon is situate within the incorporated limits of any city.”

The 2008 amendment, by ch. 405, in the next-to-last paragraph, substituted “May 1, 2000” for “July 1, 2004,” “thirty-five thousand (35,000) square feet” for “sixty thousand (60,000) square feet”, “fifty-five (55) guest rooms” for “sixty (60) guest rooms”, and “three million dollars (\$3,000,000)” for “fifteen million dollars (\$15,000,000)”.

Legislative Intent. — Section 1 of S.L. 1978, ch. 126 read: “It is the purpose of the legislature to encourage the economic development of the state of Idaho and its tourist and tourist-related industries by supporting the construction and operation of convention centers in those Idaho cities of sufficient size and economic base to maintain bona fide convention centers, who do not presently have such convention centers. To encourage the construction and operation of such convention centers, the legislature hereby authorizes the issuance of a valid license to sell liquor by the drink to be used solely by such convention centers.”

Effective Dates. — Section 3 of S.L. 1978, ch. 126 declared an emergency. Approved March 16, 1978.

Section 2 of S.L. 1990, ch. 255 declared an emergency. Approved April 5, 1990.

JUDICIAL DECISIONS

ANALYSIS

- Assignability.
- Constitutionality.
- Convention center.
- Revocation of license.
- Discrimination.
- Improper application.
- Legislative intent.
- License.
- Renewal.
- Rights under.
- Quota system.
- Special census.
- Statutory provisions.

Assignability.

The provisions of this section and § 23-908 connote that a liquor license, as between the licensee and third persons, constituted a right to which value as property and assignability is attributed, and therefore, as between the licensee and third persons, such right, upon

death of the licensee, becomes assignable by the personal representative. *Weller v. Hopper*, 85 Idaho 386, 379 P.2d 792 (1963).

Where a liquor license was one of only three such licenses available in a certain municipality, a contract for the sale of such license which gave the seller an option to repurchase

the license within a specified period of time was of such a unique nature as to be the proper subject of the remedy of specific performance. *Pern v. Stocks*, 93 Idaho 866, 477 P.2d 108 (1970).

Constitutionality.

Restricting the retail sale of liquor to locations within an incorporated city, with express exemptions for golf courses, airports and lake resorts, is a valid and constitutional exercise of plenary power by the legislature. *State v. Cantrell*, 94 Idaho 653, 496 P.2d 276 (1972).

The classification created by this section and § 23-948 does not violate the equal protection clause of United States Const., amend. 14 or Idaho Const., Art. I, § 2. *State v. Cantrell*, 94 Idaho 653, 496 P.2d 276 (1972).

This section is not an arbitrary denial of due process and a prospective licensee has no constitutionally guaranteed right to compete in the retail liquor market. *Crazy Horse, Inc. v. Pearce*, 98 Idaho 762, 572 P.2d 865 (1977).

The exemptions contained in title 23, ch. 9, do not violate the equal protection clause even though not all similarly situated retail establishments are granted exemptions. *Adams v. Department of Law Enforcement*, 99 Idaho 255, 580 P.2d 858 (1978).

Convention Center.

It is clear from the language used in this section that the convention center exception to the restrictions to liquor licenses mandated by this section makes the absence of another qualifying convention center within the same city a condition precedent to its operation and effect. *Henson v. Department of Law Enforcement*, 107 Idaho 19, 684 P.2d 996 (1984).

This section bars the issuance of a special convention center retail alcoholic beverage license if there exists within the city a facility meeting the statutory criteria of a convention center that has already been issued a retail license, even though that center holds a regular license rather than a special one. *Henson v. Department of Law Enforcement*, 107 Idaho 19, 684 P.2d 996 (1984).

—Revocation of License.

The department of law enforcement (now state police) did not act beyond its jurisdiction in revoking a retail alcoholic beverage license that had been improperly issued to a second convention center under this section even though the convention center itself had committed no unlawful acts or omissions. *Henson v. Department of Law Enforcement*, 107 Idaho 19, 684 P.2d 996 (1984).

Discrimination.

While selective enforcement is a necessary prerequisite to a prima facie case of discriminatory enforcement, it is in and of itself

insufficient; to prevail on such a claim, it is clear that the plaintiff also must show a deliberate and intentional plan of discrimination based upon some unjustifiable or arbitrary classification. Thus, where there had been neither a showing nor allegation of discriminatory intent by the department of law enforcement (now state police) in enforcing the liquor license law against the plaintiff convention center, the plaintiff's claim of discriminatory enforcement had to fail. *Henson v. Department of Law Enforcement*, 107 Idaho 19, 684 P.2d 996 (1984).

Improper Application.

Appellant would not be entitled to have issued to her a 1961 retail liquor license by reason of her failure to make proper application for and accomplish the transfer of the previously existing 1960 liquor license orally assigned to her by one who had the right to renew the license but who made no proper application for transfer of such license as was required by law. *McBride v. Hopper*, 84 Idaho 350, 372 P.2d 401 (1962).

Legislative Intent.

The legislature did not use the language from § 23-904 when it stated the basis for establishing population under this section, and since both this section and § 23-904 were amended in 1959, the legislature would not have used different language if it intended municipal population to be established by the federal decennial census under both statutes. *Kopp v. State*, 100 Idaho 160, 595 P.2d 309 (1979).

The legislature intended current population data from the United States bureau of the census to satisfy the requirements of this section. *Kopp v. State*, 100 Idaho 160, 595 P.2d 309 (1979).

License.

—Renewal.

Where a licensee in a village entitled to only two licenses under this section, after expiration of his lease, moves across the street and obtains a license, such license will be deemed a renewal of the one held in the original location and, under a lease provision requiring assignment of licenses to landlord at termination of lease, must be assigned to the landlord of the vacated premises. *Bilbao v. Krettinger*, 91 Idaho 69, 415 P.2d 712 (1966).

The right to renew is included among the privileges appurtenant to a liquor license and is a privilege which is to be exercised exclusively by the named licensee. *Uptick Corp. v. Ahlin*, 103 Idaho 364, 647 P.2d 1236 (1982).

—Rights Under.

In light of § 23-908, rights under a liquor license are inseverable parts of a complete interest and a "premises interest" may not be

created in a person other than the named licensee in contravention to statutory policy. *Uptick Corp. v. Ahlin*, 103 Idaho 364, 647 P.2d 1236 (1982).

Quota System.

This section does not separate the number of licenses allowed under the quota system from those already existing and, accordingly, where a city was entitled to only two licenses on the basis of its population and there were 11 licenses then existing in the city, all of which had been "grandfathered" in under the provision for licenses existing prior to enactment of this section, the department of law (now state police) enforcement properly refused to issue a new license to an applicant. *Crazy Horse, Inc. v. Pearce*, 98 Idaho 762, 572 P.2d 865 (1977).

Special Census.

The Idaho legislature could not have intended the term "special census" in this section to be restricted to the federal definition of

that term in 13 U.S.C. § 196, since federal law neither provided for nor defined that term prior to 1976 while the reference to "special census" was added by the 1963 amendment to this section; rather the legislature must have intended to refer to 13 U.S.C. § 8(b), authorizing the director of the census to make special surveys for state or local officials, which has been in effect since 1929. *Kopp v. State*, 100 Idaho 160, 595 P.2d 309 (1979).

Statutory Provisions.

Holder of state, county, city or village license takes it subject to all provisions of the statute under which it was granted, including local option provisions under which the municipality can prohibit the sale of liquor. *Nampa Lodge No. 1389 Benevolent & Protective Order of Elks v. Smylie*, 71 Idaho 212, 229 P.2d 991 (1951).

Cited in: *Schieche v. Pasco*, 88 Idaho 36, 395 P.2d 671 (1964).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 87 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 62 et seq., 126 et seq.

23-903a. License to retail liquor — Ski resorts — Cross-country skiing facilities. — If the director determines that an applicant or applicants are qualified to receive a ski resort or cross-country skiing facility license, he shall notify the chairman of the board of county commissioners in the county in which the ski resort or cross-country skiing facility license is to be issued. The county commissioners shall, within fifteen (15) days after receipt of notification from the director, approve or disapprove the issuance of the license. In the event the county commissioners do not approve the proposed license, a license shall not be issued. [1972, ch. 34, § 2, p. 52; am. 1974, ch. 27, § 19, p. 811; am. 1987, ch. 32, § 1, p. 53.]

23-903b. Licenses issued to owners, operators or lessees of golf courses, ski resorts, cross-country skiing facilities and waterfront resorts — Limitations on sales or transfers. — No license issued to an owner, operator, or lessee of a golf course, ski resort, cross-country skiing facility or waterfront resort, as defined in sections 23-903, 23-948 and 23-952, Idaho Code, shall be transferable to another location or facility, except as otherwise provided in section 23-956, Idaho Code. [I.C., § 23-903b, as added by 1979, ch. 256, § 1, p. 679; am. 1987, ch. 32, § 2, p. 53; am. 1991, ch. 137, § 1, p. 320; am. 2005, ch. 357, § 1, p. 1128.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1979, ch. 256 declared an emergency. Approved March 30, 1979.

23-904. License fees. — Each licensee licensed under the provisions of this act shall pay an annual license fee to the director as follows:

(1) For each license in a city of one thousand (1,000) population or less, three hundred dollars (\$300) per annum.

(2) For each license in a city of from one thousand (1,000) to three thousand (3,000) population, five hundred dollars (\$500) per annum.

(3) For each license in a city having a population of more than three thousand (3,000), seven hundred fifty dollars (\$750) per annum.

(4) For each railroad train for sale only in buffet, club or dining cars, fifty dollars (\$50.00) per annum of the scheduled run of such train within the state of Idaho; provided, that such license shall be in full, and in lieu of all other licenses herein provided for.

(5) For each common carrier boat line for sale only in buffet, club dining rooms, two hundred fifty dollars (\$250) per annum. Such license shall be in full, and in lieu of all other licenses herein provided for.

(6) For each license issued to the owner, operator, or lessee of a golf course as described in section 23-903, Idaho Code, or to the lessee of any premises situate on such golf course, situate in any county having a population of:

(a) Less than twenty thousand (20,000), two hundred dollars (\$200) per annum;

(b) Twenty thousand (20,000) but less than forty thousand (40,000), three hundred dollars (\$300) per annum; and

(c) Forty thousand (40,000) or more, four hundred dollars (\$400) per annum.

(7) For each common carrier airline for sale only in common carrier aircraft, two hundred fifty dollars (\$250) per annum. Such license shall be in full, and in lieu of all other licenses herein provided for.

(8) For each license issued to the owner, operator, or lessee of a restaurant operated on an airport, as described in section 23-903, Idaho Code, situate within the corporate limits of a city, the fee shall be the same as provided in paragraphs (1) through (3), inclusive, of this section.

(9) For each license issued to the owner, operator, or lessee of a restaurant operated on an airport, as described in section 23-903, Idaho Code, situate without the corporate limits of a city, the fee shall be the same as provided in paragraph (6) of this section. Licenses issued under and pursuant to the provisions of this act shall expire at 1:00 o'clock a.m. on the first day of January of the following year.

(10) For each license issued to an owner or operator of a year-round resort as described in section 23-957, Idaho Code, a one (1) time fee of twenty-five thousand dollars (\$25,000), with a subsequent renewal fee of three thousand five hundred dollars (\$3,500) per annum. For each license issued to an owner or operator of a beverage, lodging or dining facility within the premises of a year-round resort as described in section 23-957, Idaho Code, a one (1) time fee of twenty-five thousand dollars (\$25,000) with a subsequent renewal fee of three thousand five hundred dollars (\$3,500) per annum. For each license issued to a lessee of a beverage, lodging or dining facility within the premises of the year-round resort as described in section 23-957, Idaho Code, a one (1) time fee of twenty-five thousand dollars

(\$25,000) with a subsequent renewal fee of three thousand five hundred dollars (\$3,500) per annum.

Provided that any licensee who operates for only a portion of a year may have his license fee prorated from the date he commences operation to the end of the calendar year, but in no event for less than six (6) months.

In the event a licensee who was previously issued a license on a prorated basis under the provisions hereof desires to have such license renewed for the same period for the next succeeding year, he shall file his intention to so apply for such license with the director, accompanied by the fee required for the issuance of such license on or before December 31 of the year preceding.

The license fees herein provided for are exclusive of and in addition to other license fees chargeable in the state of Idaho.

The basis upon which respective populations of municipalities shall be determined is the last preceding census or any subsequent special census conducted by the United States bureau of the census, unless a direct enumeration of the inhabitants thereof be made by the state of Idaho, in which case such later direct enumeration shall constitute such basis. [1947, ch. 274, § 4, p. 870; am. 1949, ch. 277, § 1, p. 567; am. 1953, ch. 125, § 1, p. 196; am. 1957, ch. 151, § 2, p. 250; am. 1959, ch. 118, § 2, p. 254; am. 1963, ch. 423, § 1, p. 1098; am. 1965, ch. 35, § 2, p. 52; am. 1967, ch. 143, § 1, p. 326; am. 1967, ch. 417, § 1, p. 1227; am. 1974, ch. 27, § 20, p. 811; am. 1991, ch. 137, § 2, p. 320; am. 2006, ch. 449, § 1, p. 1333; am. 2008, ch. 178, § 1, p. 529.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 449, redesignated the provisions of this section and added subsection (10).

The 2008 amendment, by ch. 178, rewrote subsection (10), which formerly read: “For each license issued to an owner or operator of a year-round resort as described in section 23-957, Idaho Code, a one (1) time fee of twenty-five thousand dollars (\$25,000). For each beverage, lodging or dining facility owner or operator within the premises of a year-round resort as described in section 23-

957, Idaho Code, two thousand five hundred dollars (\$2,500) per annum. For each beverage, lodging or dining facility lessee within the premises of the year-round resort as described in section 23-957, Idaho Code, two thousand five hundred dollars (\$2,500) per annum.”

Compiler’s Notes. — For words “this act”, see Compiler Notes, § 23-901.

Effective Dates. — Section 3 of S.L. 1965, ch. 35 declared an emergency. Approved February 17, 1965.

JUDICIAL DECISIONS

ANALYSIS

- Legislative intent.
- License.
- Renewal.
- Loss.

Legislative Intent.

The legislature did not use the language from this section when it stated the basis for establishing population under § 23-903, and since both § 23-903 and this section were amended in 1959, the legislature would not have used different language if it intended municipal population to be established by the

federal decennial census under both statutes. *Kopp v. State*, 100 Idaho 160, 595 P.2d 309 (1979).

License.

—Renewal.

Licenses are renewable annually. *Bilbao v. Krettinger*, 91 Idaho 69, 415 P.2d 712 (1966).

—Loss.

Negative subsequent local option election in city held on March 14, 1950, did not terminate state, city, and county licenses issued to plaintiffs on effective date of election, where licenses issued carried termination date of December 31, 1950, since legislature in-

tended, because of substantial fees exacted and failure to insert refunding clause, that holders of license should be protected against loss of license prior to termination date unless the licensee was at fault. *Nampa Lodge No. 1389 Benevolent & Protective Order of Elks v. Smylie*, 71 Idaho 212, 229 P.2d 991 (1951).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 167 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 267 et seq.

23-905. Application for licenses — Penalty for false statements.

— Prior to the issuance of a license as herein provided, the applicant shall file with the director an application, in writing, signed by the applicant and containing such information and statements relative to the applicant and the premises where the liquor is to be sold as may be required by the director. The application shall be verified by the affidavit of the person making the same before a person authorized to administer oaths and shall be accompanied with the license fee herein required.

In addition to setting forth the qualifications required by other provisions of this act, the application must show:

(1) A detailed description of the premises for which a license is sought and its location.

(2) A detailed statement of the assets and liabilities of the applicant.

(3) The names and addresses of all persons who will have any financial interest in any business to be carried on in and upon the licensed premises, whether such interest results from open loans, mortgages, conditional sales contracts, silent partnerships, trusts or any other basis than open trade accounts incurred in the ordinary course of business, and the amounts of such interests.

(4) The name and address of the applicant, which shall include all members of a partnership or association and the officers, members of the governing board and ten (10) principal stockholders of a corporation.

(5) A copy of the articles of incorporation and bylaws of any corporation, the articles of association and the bylaws of any association, or the articles of partnership of any partnership.

(6) If during the period of any license issued hereunder any change shall take place in any of the requirements of subparagraph (3), (4), or (5) of this section, the licensee shall forthwith make a written report of such change to the director.

(7) If during the period of any license issued hereunder the licensee seeks to move his business from one premise to another in the same city, he may do so subject to the director's approval that the new premise is suitable for the carrying on of the business.

If any false statement is made in any part of said application, or any subsequent report, the applicant, or applicants, shall be deemed guilty of a felony and upon conviction thereof shall be imprisoned in the state prison for not less than one (1) year nor more than five (5) years and fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars

(\$5,000), or both such fine and imprisonment. [1947, ch. 274, § 5, p. 870; am. 1974, ch. 27, § 21, p. 811; am. 1980, ch. 313, § 1, p. 802; am. 1991, ch. 137, § 3, p. 320; am. 1994, ch. 14, § 3, p. 20.]

STATUTORY NOTES

Cross References. — Military exemption from fees, § 67-2602A.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-901.

JUDICIAL DECISIONS

Legislative Intent.

The application procedure set forth in this section and § 23-907 and the procedure to be followed in transferring liquor licenses in § 23-908 makes it clear that the legislature painstakingly attempted to ensure that the department have complete control over who may own a liquor license, and that only per-

sons who could be depended upon to advance the policies of the act were entitled to a license. *Uptick Corp. v. Ahlin*, 103 Idaho 364, 647 P.2d 1236 (1982).

Cited in: *Pern v. Stocks*, 93 Idaho 866, 477 P.2d 108 (1970).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 118 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 151 et seq.

23-906. Licenses for dining, buffet and club cars, common carrier boats, and common carrier airlines. — Any person operating any line of railroad using dining club or buffet cars in connection with regularly operated train service, or any common carrier boat or boats, or any common carrier airline, desiring a license to sell liquor under the provisions of this act in any such cars, boats, or common carrier aircraft shall apply to the director for a license, as in this act provided, accompanying the application with the license fee herein prescribed. [1947, ch. 274, § 6, p. 870; am. 1963, ch. 423, § 2, p. 1098; am. 1974, ch. 27, § 22, p. 811.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-901.

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 96.

23-907. Investigation of applications. — Upon receipt of an application for a license under this act, accompanied by the necessary license fee, the director, within ninety (90) days thereafter, shall cause to be made a thorough investigation of all matters pertaining thereto. The investigation shall include a fingerprint-based criminal history check of the Idaho central criminal history database and the federal bureau of investigation criminal history database. Each person listed as an applicant on an initial application shall submit a full set of fingerprints and the fee to cover the cost of the

criminal history background check for such person with the application. If the director shall determine that the contents of the application are true, that such applicant is qualified to receive a license, that his premises are suitable for the carrying on of the business, and that the requirements of this act and the rules promulgated by the director are met and complied with, he shall issue such license; otherwise the application shall be denied and the license fee, less the costs and expenses of investigation, returned to the applicant.

In making the investigation required by this section the director shall have the power to investigate and examine the books and records of the licensee and any person having a financial interest in any business to be conducted on the licensed premises, including, but not limited to, their bank accounts, returns filed under the Idaho Property Relief Act, 1931, as amended, and any other sources of information deemed desirable by the director and not specifically prohibited by law. [1947, ch. 274, § 7, p. 870; am. 1974, ch. 27, § 23, p. 811; am. 2001, ch. 284, § 1, p. 1014.]

STATUTORY NOTES

Compiler's Notes. — The Property Relief Act of 1931 was repealed by S.L. 1959, ch. 299, § 82. The present law is the Idaho Income Tax Act, which is compiled in § 63-3001 et seq.

For words "this act", see Compiler's Notes, § 23-901.

JUDICIAL DECISIONS

Legislative Intent.

Application procedure set forth in § 23-905 and this section and the procedure to be followed in transferring liquor licenses in § 23-908 make it clear that the legislature painstakingly attempted to ensure that the department have complete control over who may own a liquor license, and that only per-

sons who could be depended upon to advance the policies of the act were entitled to a license. *Uptick Corp. v. Ahlin*, 103 Idaho 364, 647 P.2d 1236 (1982).

Cited in: *McBride v. Hopper*, 84 Idaho 350, 372 P.2d 401 (1962); *Weller v. Hopper*, 85 Idaho 386, 379 P.2d 792 (1963).

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 158 et seq.

23-908. Form of license — Authority — Expiration — Limitations.

— (1) Every license issued under the provisions of this chapter shall set forth the name of the person to whom issued, the location by street and number, or other definite designation, of the premises, and such other information as the director shall deem necessary. If issued to a partnership, the names of the persons constituting such partnership shall be set forth in the application. If issued to a corporation or association, the names of the principal officers and the governing board shall be set forth in the application. Such license shall be signed by the licensee and prominently displayed in the place of business at all times. Every license issued under the provisions of this chapter is separate and distinct and no person except the licensee therein named except as herein otherwise provided, shall exercise

any of the privileges granted thereunder. All licenses shall expire at 1:00 o'clock a.m. on the first day of the renewal month which shall be determined by the director by administrative rule and shall be subject to annual renewal upon proper application. The director will determine the renewal month by county based on the number of current licenses within each county, distributing renewals throughout the licensing year. The director may adjust the renewal month to accommodate population increases. Each licensee will be issued a temporary license to operate until their renewal month has been determined. Thereafter, renewals will occur annually on their renewal month. Renewal applications for liquor by the drink licenses accompanied by the required fee must be filed with the director on or before the first day of the designated renewal month. Any licensee holding a valid license who fails to file an application for renewal of his current license on or before the first day of the designated renewal month shall have a grace period of an additional thirty-one (31) days in which to file an application for renewal of the license. The licensee shall not be permitted to sell and dispense liquor by the drink at retail during the thirty-one (31) day extended time period unless and until the license is renewed. In any city of less than sixteen thousand (16,000) population, as established in the last preceding census or any subsequent special census conducted by the United States bureau of the census, no person shall be granted more than one (1) license in any city for any one (1) year; and no partnership, association or corporation in such city of less than sixteen thousand (16,000) population holding a license under the provisions of this chapter shall have as a member, officer or stockholder any person who has any financial interest of any kind in, or is a member of, another partnership or association or an officer of another corporation holding a license in the same city for the same year; provided that this section shall not prevent any person, firm or corporation, owning two (2) or more buildings on connected property in a city from making application for and receiving licenses permitting the sale of liquor by the drink in such building.

(2) An application to transfer any license issued pursuant to chapter 9, title 23, Idaho Code, shall be made to the director. Upon receipt of such an application, the director shall make the same investigation and determinations with respect to the transferee as are required by section 23-907, Idaho Code, and if the director shall determine that all of the conditions required of a licensee under chapter 9, title 23, Idaho Code, have been met by the proposed transferee, then the license shall be indorsed over to the proposed transferee by said licensee for the remainder of the period for which such license has been issued and the director shall issue a license to the transferee.

(3) The director, in his discretion, may deny the transfer of a license during the pendency [pendency] of any proceedings for suspension or revocation which were instituted pursuant to the terms of this chapter.

(4) Each new license issued on or after July 1, 1980, shall be placed into actual use by the original licensee at the time of issuance and remain in use for at least six (6) consecutive months or be forfeited to the state and be eligible for issue to another person by the director after compliance with the

provisions of section 23-907, Idaho Code. Such license shall not be transferable for a period of two (2) years from the date of original issuance, except as provided by subsection (5)(a), (b), (c), (d) or (e) of this section.

(5) The fee for transferring a liquor license shall be ten percent (10%) of the purchase price of the liquor license or the cost of good will, whichever is greater; except no fee shall be collected in the following events:

- (a) The transfer of a license between husband and wife in the event of a property division; or
- (b) The transfer of a license to a receiver, trustee in bankruptcy or similar person or officer; or
- (c) The transfer of a license to the heirs or personal representative of the estate in the event of the death of the licensee; or
- (d) The transfer of a license arising out of the dissolution of a partnership where the license is transferred to one (1) or more of the partners; or
- (e) The transfer of a license within a family whether an individual, partnership or corporation.

(6) The fee for transferring a liquor license for other than a sale shall be fifty percent (50%) of the per annum license fee set forth in section 23-904, Idaho Code; except no fee shall be collected for transfers as outlined in subsection (5)(a), (b), (c), (d) or (e) of this section. [1947, ch. 274, § 8, p. 870; am. 1949, ch. 276, § 2, p. 565; am. 1959, ch. 118, § 3, p. 254; am. 1967, ch. 143, § 2, p. 326; am. 1974, ch. 27, § 23, p. 811; am. 1977, ch. 143, § 1, p. 316; am. 1978, ch. 353, § 1, p. 936; am. 1980, ch. 313, § 2, p. 802; am. 1981, ch. 75, § 1, p. 106; am. 1991, ch. 28, § 1, p. 54; am. 1991, ch. 283, § 1, p. 729; am. 2001, ch. 30, § 1, p. 43.]

STATUTORY NOTES

Amendments. — This section was amended by two 1991 acts which appear to be compatible and have been compiled together.

The 1991 amendment by ch. 28, § 1 in subsection (1) in the second and third sentences added "in the application" following "be set forth"; in subsection (2) at the end of the second sentence substituted "issue a license to the transferee" for "note his approval thereof upon such license"; added the present subsection (3) and renumbered former subsection (3) as present subsection (4) and in the last sentence of such subsection (4) substituted "subsection (5)" for "subsection (4)" preceding "(a), (b)"; renumbered former subsections (4) and (5) as present subsections (5) and (6) and in present subsection (6) deleted "section 23-908" following "transfers as outlined in", substituted "(5)" for "(4)" preceding "(a), (b)," and substituted "of this section" for "Idaho Code"; and deleted a former subsection (6) which read, "The controlling interest in the stock ownership of a corporate licensee shall not be, directly or indirectly, sold, transferred, or hypothecated unless the licensee be a corporation, the stock of which is listed on a stock exchange in Idaho, or in the city of New

York, state of New York, or which is required by law to file periodic reports with the securities and exchange commission. Provided, however, that in the event of the transfer of more than twenty-five per cent (25%) of the authorized and issued stock of the corporation, it shall create a rebuttable presumption that such transfer constituted a transfer of the controlling interest of such corporation."

The 1991 amendment by ch. 283, § 1, in subsection (1) in the first sentence added "the provisions of" following "Every license issued under", substituted "chapter" for "act" preceding "shall set"; in the fifth sentence substituted "chapter" for "act" following "provisions of this"; in the eighth sentence added all the clause at the beginning of the sentence preceding "no person shall", added "in such city of less than sixteen thousand (16,000) population" following "no partnership, association or corporation", added "the provisions of" following "holding a license under" and substituted "chapter" for "act" preceding "shall have as a member"; and in subsection (3) changed "subsections" to "subsection" following "except as provided by."

Compiler's Notes. — The bracketed inser-

tion in subsection (3) was added by the compiler.

Effective Dates. — Section 3 of S.L. 1967, ch. 143 provided that following its passage and approval this act shall be in full force and

effect retroactive, commencing as of December 31, 1966.

Section 3 of S.L. 1980, ch. 313 declared an emergency. Approved April 2, 1980.

JUDICIAL DECISIONS

ANALYSIS

Assignment.
Construction.
Indorsement.
Legislative intent.
Loss of license.
Premises interest.
Renewal.
Rights under license.
Tavern owner liability.
Transfer of license.

Assignment.

Appellant would not be entitled to have issued to her a 1961 retail liquor license by reason of her failure to make proper application for and accomplish the transfer of the previously existing 1960 liquor license orally assigned to her by one who had the right to renew the license but who made no proper application for transfer of such license as was required by law. *McBride v. Hopper*, 84 Idaho 350, 372 P.2d 401 (1962).

The provisions of this section and § 23-903 connote that a liquor license as between the licensee and third persons constitutes a right to which value as property and assignability is attributed, and therefore, as between the licensee and third persons, such right upon death of the licensee becomes assignable by the personal representative. *Weller v. Hopper*, 85 Idaho 386, 379 P.2d 792 (1963).

Construction.

Act providing for issuance of liquor licenses must be construed as a whole in determining whether effect of negative local option election automatically terminates license, or whether license remains in effect until its expiration date. *Nampa Lodge No. 1389 Benevolent & Protective Order of Elks v. Smylie*, 71 Idaho 212, 229 P.2d 991 (1951).

No inference that the legislature intended to license premises as well as persons can be drawn from the statutory requirement that a license is issued for operation only at a particular location. *Uptick Corp. v. Ahlin*, 103 Idaho 364, 647 P.2d 1236 (1982).

Indorsement.

The term "indorsed" as used in this section which authorizes indorsement with the commissioner's (now director's) approval noted thereon implies "a transfer by a writing upon the instrument" and it is implicit in the context of this section that the indorsement shall

accomplish transfer of the license. *Weller v. Hopper*, 85 Idaho 386, 379 P.2d 792 (1963).

Legislative Intent.

Application procedure set forth in §§ 23-905 and 23-907 and the procedure to be followed in transferring liquor licenses in this section make it clear that the legislature painstakingly attempted to ensure that the department have complete control over who may own a liquor license, and that only persons who could be depended upon to advance the policies of the act were entitled to a license. *Uptick Corp. v. Ahlin*, 103 Idaho 364, 647 P.2d 1236 (1982).

Liquor licenses are not taxes contemplated by Const., Art. VII, §§ 2, 5, but constitute a separate and distinct way of raising revenue, independent of taxation in the commonly accepted meaning of that term. *BHA Invs., Inc. v. State*, 138 Idaho 348, 63 P.3d 474 (2003).

Loss of License.

Negative subsequent local option election in city held in March 14, 1950, did not terminate state, city, and county licenses issued to plaintiffs on effective date of election, where licenses issued carried termination date of December 31, 1950, since legislature intended, because of substantial fees exacted and failure to insert refunding clause, that holders of licenses should be protected against loss of license prior to termination date unless the licensee was at fault. *Nampa Lodge No. 1389 Benevolent & Protective Order of Elks v. Smylie*, 71 Idaho 212, 229 P.2d 991 (1951).

Premises Interest.

In light of this section, rights under a liquor license are inseverable parts of a complete interest and a "premises interest" may not be created in a person other than the named licensee in contravention to statutory policy.

Uptick Corp. v. Ahlin, 103 Idaho 364, 647 P.2d 1236 (1982).

Renewal.

Licenses are renewable annually. *Bilbao v. Krettinger*, 91 Idaho 69, 415 P.2d 712 (1966).

The right to renew is included among the privileges appurtenant to a liquor license and is a privilege which is to be exercised exclusively by the named licensee. *Uptick Corp. v. Ahlin*, 103 Idaho 364, 647 P.2d 1236 (1982).

Rights Under License.

The right to operate a tavern pursuant to a liquor license is personal to the record holder of the license. *Fischer v. Cooper*, 116 Idaho 374, 775 P.2d 1216 (1989).

Tavern Owner Liability.

Defendant could not escape responsibility for the activities of a tavern which was operated under a license issued to her on her application, even though defendant leased the tavern to a third party and was not involved in its operation. *Fischer v. Cooper*, 116 Idaho 374, 775 P.2d 1216 (1989).

Transfer of License.

All rights in a liquor license are inseverable parts of a single legal interest which may not be transferred away at random or piecemeal. *Uptick Corp. v. Ahlin*, 103 Idaho 364, 647 P.2d 1236 (1982).

Any attempted transfer of a liquor license

or the rights thereunder can be effected only by complying with statutory procedures. *Uptick Corp. v. Ahlin*, 103 Idaho 364, 647 P.2d 1236 (1982).

Persons may freely contract for the transfer of liquor licenses, subject, of course, to the approval of the department of law enforcement (now state police), and such contracts may be specifically enforced as the conveyance of a unique property; thus by carefully drawn and executed agreements, a lessor may ensure that a liquor license will not be transferred away from the leased premises, regardless of whether the liquor license was originally issued in the lessor's name. *Uptick Corp. v. Ahlin*, 103 Idaho 364, 647 P.2d 1236 (1982).

The uniformity and proportionality requirements of the Idaho constitution did not apply to liquor license fees and there was no reason to treat a license transfer fee any differently. *BHA Invs., Inc. v. State*, 138 Idaho 348, 63 P.3d 474 (2003).

Liquor license was simply the grant or permission under governmental authority to the licensee to engage in the business of selling liquor, and requiring the holder to pay a transfer fee did not amount to a governmental taking without just compensation. *BHA Invs., Inc. v. State*, 138 Idaho 348, 63 P.3d 474 (2003).

Cited in: *Schieche v. Pasco*, 88 Idaho 36, 395 P.2d 671 (1964).

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., *Intoxicating Liquors*, § 191 et seq.

23-909. Bond. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1947, ch. 274, § 9, p. 870, was repealed by S.L. 1955, ch. 178, § 1, p. 367.

23-910. Persons not qualified to be licensed. — No license shall be issued to:

(1) Any person, or any one (1) of its members, officers, or governing board, who has, within three (3) years prior to the date of making application, been convicted of any violation of the laws of the United States, the state of Idaho, or any other state of the United States, or of the resolutions or ordinances of any county or city of this state, relating to the importation, transportation, manufacture or sale of alcoholic liquor or beer; or who has been convicted of, paid any fine, been placed on probation, received a deferred sentence, received a withheld judgment or completed any sentence of

confinement for any felony within five (5) years prior to the date of making application for any license.

(2) A person who is engaged in the operation, or interested therein, of any house or place for the purpose of prostitution or who has been convicted of any crime or misdemeanor opposed to decency and morality.

(3) A person whose license issued under this act has been revoked; an individual who was a member of a partnership or association which was a licensee under this act and whose license has been revoked; an individual who was an officer, member of the governing board or one (1) of the ten (10) principal stockholders of a corporation which was a licensee under this act and whose license has been revoked; a partnership or association one (1) of whose members was a licensee under this act and whose license was revoked; a corporation one (1) of whose officers, member of the governing board or ten (10) principal stockholders was a licensee under the provisions of this act and whose license has been revoked; an association or partnership, one (1) of whose members was a member of a partnership or association licensed under the provisions of this act and whose license has been revoked; a partnership or association, one (1) of whose members was an officer, a member of the governing board, or one (1) of the ten (10) principal stockholders of a corporation licensed under the provisions of this act and whose license has been revoked; a corporation, one (1) of whose officers, member of the governing board, or ten (10) principal stockholders was a member of a partnership or association licensed under the provisions of this act and whose license was revoked; a corporation, one (1) of whose officers, member of the governing board, or ten (10) principal stockholders was an officer, member of the governing board, or one (1) of the ten (10) principal stockholders of a corporation licensed under the provisions of this act and whose license was revoked.

(4) Any officer, agent, or employee of any distillery, winery, brewery, or any wholesaler, or jobber, of liquor or malt beverages except as provided in section 23-912, Idaho Code. This prohibition shall not apply to officers, agents, or employees of any winery operating a golf course on the same premises as the winery.

(5) A person who does not hold a retail beer license issued under the laws of the state of Idaho.

(6) Any license, held by any licensee disqualified under the provisions of this section from being issued a license, shall forthwith be revoked by the director. [1947, ch. 274, § 10, p. 870; am. 1957, ch. 124, § 1, p. 205; am. 1961, ch. 28, § 1, p. 37; am. 1963, ch. 423, § 3, p. 1098; am. 1969, ch. 406, § 1, p. 1126; am. 1991, ch. 179, § 1, p. 442; am. 1992, ch. 315, § 1, p. 937; am. 1994, ch. 14, § 5, p. 20; am. 1996, ch. 349, § 2, p. 1167; am. 1999, ch. 141, § 1, p. 403.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-901.

In the opinion of the Idaho supreme court subdivision d. (now (3)) is unconstitutional, violating both U.S. Const., Amend. 14 and

Idaho Const., Art. 1, § 2 in that it sets up an unreasonable, arbitrary and discriminatory classification. It, in effect, prevents a person who was convicted of a felony while holding a retail liquor license from ever obtaining a

license, while one convicted of a felony who did not hold such a license could obtain a license after five years. See *Weller v. Hopper*, 85 Idaho 386, 379 P.2d 792 (1963).

The word "director" was substituted for "commissioner" in subdivision h. (now (6)) of this section on authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 40, § 3, (§ 67-2403).

Effective Dates. — Section 4 of S.L. 1963,

ch. 423 declared an emergency. Became law without governor's approval. Received by governor March 28, 1963.

Section 3 of S.L. 1996, ch. 349 declared an emergency and provided that the act should become effective on and after passage and approval retroactive to January 1, 1996. Became law without the governor's signature, March 12, 1996.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.
Nonresidents.

Constitutionality.

Subdivision d. (now (3)) of this section is unconstitutional in that it denies equal protection of the laws in violation of U.S. Const., Amend. 14 and Idaho Const., Art. I, § 2 in that the classification attempted to be set up is arbitrary, unreasonable and discriminatory, as applied to one convicted of felony while holding liquor license. *Weller v. Hopper*, 85 Idaho 386, 379 P.2d 792 (1963).

Nonresidents.

Buyer of liquor place was not entitled to cancelation of contract of sale on the ground that defendants had represented that she

could secure a liquor license even though they knew she could not as she was a nonresident. *Graves v. Cupic*, 75 Idaho 451, 272 P.2d 1020 (1954).

The residential disqualification of the mortgagee as a possible licensee under the Idaho law at the time the mortgage was given was not pertinent to the question as to whether or not the liquor license was included in the chattel mortgage. *Schieche v. Pasco*, 88 Idaho 36, 395 P.2d 671 (1964).

Cited in: *Uptick Corp. v. Ahlin*, 103 Idaho 364, 647 P.2d 1236 (1982).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 114-117.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 146 et seq.

23-911. Restrictions on manufacturers, transporters or distillers. — Except as provided in section 23-912, Idaho Code, no manufacturer, rectifier, wholesaler, stockholder, shareholder, partner, or the owner of any other interest in any corporations, association or partnership financially interested in the manufacture, transportation or sale of liquor shall furnish, give, rent, lend or sell any equipment or fixtures directly or indirectly, or through a subsidiary or affiliate or by any officer, director, or firm member of the industry or otherwise furnish financial aid to any person engaged in the sale of liquor hereunder and no licensee hereunder shall receive or be the beneficiary of any of the benefits hereby prohibited. [1947, ch. 274, § 11, p. 870; am. 1973, ch. 75, § 1, p. 121; am. 1999, ch. 141, § 2, p. 403.]

23-912. Restrictions of persons interested in premises. — (1) Except as provided in subsection (2) of this section, no manufacturer, rectifier, wholesaler, stockholder, shareholder, partner or the owner of any other interest in any corporation, association or partnership financially interested in the manufacture, transportation (except public carriers) or sale of liquor shall hold any interest in any premise licensed hereunder for the sale of liquor or receive any rental or remuneration from any such premise.

(2) A manufacturer, rectifier, wholesaler, stockholder, shareholder, partner or the owner of any interest in any corporation, association or partnership financially interested in the manufacture, transportation or sale of liquor may hold interest in a licensed premises if the licensed premises serves food cooked on the site of the licensed premises, and the person or entity can show through recordkeeping that no more than fifty percent (50%) of the gross revenue to the licensed premises is derived from the sale of alcoholic beverages on-site. The owner of the licensed premises pursuant to this subsection shall comply with and be subject to all other rules, regulations or other provisions of law which apply to manufacturers, rectifiers, wholesalers, stockholders, shareholders, partners or the owners of any interest in any corporation, association or partnership financially interested in the manufacture, transportation or sale of liquor save and except as such rules, regulations or laws may restrict such sales at the licensed premises. The holder of a license pursuant to this section shall not be disqualified from holding a beer license, a retail wine license or wine by the drink license for the sale of beer or wine at the licensed premises on the grounds that the licensee is also a manufacturer, wholesaler, stockholder, shareholder, partner or the owner of any interest in any corporation, association or partnership financially interested in the manufacture, transportation or sale of liquor, beer or wine. This subsection shall not be deemed to grant a license for the retail sale of liquor by the drink and the license must be obtained through normal lawful means. [1947, ch. 274, § 12, p. 870; am. 1999, ch. 141, § 3, p. 403.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

23-913. Licensee not allowed near churches or schools — Exceptions. — No license shall be issued for any premises in any neighborhood which is predominantly residential or within 300 feet of any public school, church, or any other place of worship, measured in a straight line to the nearest entrance to the licensed premises, except with the approval of the governing body of the municipality; provided, that this limitation shall not apply to any duly licensed premises that at the time of licensing did not come within the restricted area but subsequent to licensing same [came] therein. [1947, ch. 274, § 13, p. 870.]

STATUTORY NOTES

Cross References. — State liquor stores not permitted near schools, § 23-303.

Compiler's Notes. — The bracketed word "came" was inserted by the compiler.

JUDICIAL DECISIONS

Cited in: Uptick Corp. v. Ahlin, 103 Idaho 364, 647 P.2d 1236 (1982).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 109, 110.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 133 et seq., 168.

23-914. Licensee must purchase from division — Price. — All liquor sold by any licensee shall be purchased from the division through its regular retail stores and distributors at the posted price thereof. The division is hereby authorized and directed to make such sales for cash, check or money order to be paid at the time of purchase upon a special permit issued to such licensee in such form as shall be prescribed by the director of the division. The posted price as used herein shall mean the retail price of such liquor as fixed and determined by the division.

It shall be unlawful for any licensee to sell, or keep for sale, or have on his premises for any purpose whatsoever, any liquor except that purchased as herein authorized and provided, and any licensee found in possession of, selling or keeping for sale any liquor not purchased as herein authorized shall be guilty of a felony and upon conviction thereof shall be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or by imprisonment in the state prison for not more than five (5) years, or by both such fine and imprisonment. Any license issued to such person shall be immediately and permanently revoked. The amount of liquor to be sold to licensees hereunder in any city or village shall be determined by the director or other executive officer of the division, but such sales shall be regulated so as to maintain adequate stocks of merchandise for sale to persons other than said licensees.

The provisions of this section notwithstanding, railroad companies shall have the right to have in their possession liquors other than those purchased from the division. [1947, ch. 274, § 14, p. 870; am. 1949, ch. 277, § 2, p. 567; am. 1988, ch. 216, § 2, p. 410; am. 2009, ch. 23, § 53, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, in the section heading and throughout the section, substituted “division” for

“Idaho liquor dispensary” or similar language and “director” for “superintendent.”

JUDICIAL DECISIONS

Cited in: State v. Grady, 89 Idaho 204, 404 P.2d 347 (1965).

23-915. Officers may seize illegal liquor. — The director, or any of his agents, any sheriff, constable, or other police officer who shall find any liquor kept or held by any person in violation of the provisions of this act may forthwith seize and remove the same and keep the same as evidence and upon conviction of the person for violation of the provisions hereof, the said liquor, and all packages or receptacles containing the same, shall be forfeited to the state of Idaho and in addition the person so violating this act shall be subject to the other penalties herein prescribed. [1947, ch. 274, § 15, p. 870; am. 1974, ch. 27, § 25, p. 811.]

STATUTORY NOTES

Cross References. — Similar provision, § 23-611.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-901.

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 396 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 551 et seq.

23-916. County and city licenses. — In addition to the licensing and control herein provided for the retail sale of liquor by the drink, each county and incorporated city in the state of Idaho is hereby authorized and empowered to license the sale of liquor by the drink at retail within the corporate limits of such city. The respective local authorities may impose and collect license fees for the use and benefit of such city not to exceed seventy-five percent (75%) of the amount of the license fee collected by the director as herein provided and for the use and benefit of such county not to exceed twenty-five percent (25%) of the amount of the license fee collected by the director as herein provided. The governing authority of such city may provide further regulations for the control of such business, and the board of county commissioners of any county may fix the fee for, and may regulate and control the use of, any license issued for the sale of liquor by the drink at retail in any licensed premises not situate within the incorporated limits of any city, not in conflict with the provisions of this act. [1947, ch. 274, § 16, p. 870; am. 1957, ch. 151, § 3, p. 250; am. 1974, ch. 27, § 26, p. 811.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-901.

JUDICIAL DECISIONS

ANALYSIS

Loss of license.

Statutory provisions governing.

Loss of License.

Negative subsequent local option election in city held on March 14, 1950, did not terminate state, city, and county licenses issued to plaintiffs on effective date of election, where licenses issued carried termination date of December 31, 1950, since legislature intended, because of substantial fees exacted and failure to insert refunding clause, that holders of licenses should be protected against loss of license prior to termination date unless the licensee was at fault. *Nampa Lodge No. 1389 Benevolent & Protective Order of Elks v. Smylie*, 71 Idaho 212, 229 P.2d 991 (1951).

Statutory Provisions Governing.

Holder of state, county, city or village license takes it subject to all provisions of the

statute under which it was granted, including local option provisions under which the municipality can prohibit the sale of liquor. *Nampa Lodge No. 1389 Benevolent & Protective Order of Elks v. Smylie*, 71 Idaho 212, 229 P.2d 991 (1951).

Statute provided cities with authority to impose a license fee, not a transfer fee; the state legislature had not granted cities the authority to impose a transfer fee and, as such, the city exceeded its power in collecting the transfer fee from the corporation. *BHA Invs., Inc. v. City of Boise*, 138 Idaho 356, 63 P.3d 482 (2003).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 18, 91, 103.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 53 et seq., 66 et seq.

A.L.R. — Validity of ordinance or other regulation which confines intoxicating liquor

licenses to smaller areas within larger areas in which sale is not prohibited by constitution or statute (spot ordinance). 65 A.L.R.4th 555.

Zoning regulation of intoxicating liquor as pre-empted by state law. 65 A.L.R.4th 555.

23-917. Referendum — Local option. [Effective until January 1, 2011.] — No license shall be issued hereunder until on or after July 1, 1947. Within sixty (60) days after the effective date of this act [March 19, 1947] a petition in writing signed by not less than twenty percent (20%) of the registered, qualified electors of any city or village may be filed with the clerk of said city or village as their protest against the issuance of any license in said city or village under the provisions of this act. In the event said petition is presented, the governing body of any such city or village shall, within five (5) days after the presentation of said petition, meet and determine the sufficiency thereof by ascertaining whether said petition is signed by the required number of registered, qualified electors of the city or village affected. In the event the governing body of said city or village determines that said petition is signed by the required percentage of registered, qualified electors, said governing body shall forthwith make an order calling an election to be held within said city or village, subject to the provisions of section 34-106, Idaho Code, in the manner provided by law for holding elections for city or village officers. All the laws of the state of Idaho relating to the holding of elections of city or village officers for such city or village, whether special charter or general law of the state, shall apply to the holding of the election provided for in this section, except where specifically modified herein. In addition to the other requirements of law the notice of election shall notify the electors of the issue to be voted upon at said election. [1947, ch. 274, § 17, p. 870; am. 1995, ch. 118, § 12, p. 417.]

STATUTORY NOTES

Cross References. — Election laws, § 34-101 et seq.

Notice by mail, § 60-109A.

Compiler's Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 23-917.

For words "this act", see Compiler's Notes, § 23-901.

The bracketed insertion in the first sentence was added by the compiler.

JUDICIAL DECISIONS

Statutory Provisions Governing.

Holder of state, county, city or village license takes it subject to all provisions of the statute under which it was granted, including local option provisions under which the municipality can prohibit the sale of liquor. Nampa Lodge No. 1389 Benevolent & Protec-

tive Order of Elks v. Smylie, 71 Idaho 212, 229 P.2d 991 (1951).

Cited in: State v. Garde, 69 Idaho 209, 205 P.2d 504 (1949); McBride v. Hopper, 84 Idaho 350, 372 P.2d 401 (1962).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 60 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 57, 80 et seq.

23-917. Referendum — Local option. [Effective January 1, 2011.] — No license shall be issued hereunder until on or after July 1, 1947. Within sixty (60) days after the effective date of this chapter [March 19, 1947] a petition in writing signed by not less than twenty percent (20%) of the registered, qualified electors of any city may be filed with the clerk of said city as their protest against the issuance of any license in said city under the provisions of this chapter. In the event said petition is presented, the governing body of any such city shall, within five (5) days after the presentation of said petition, meet and determine the sufficiency thereof by ascertaining whether said petition is signed by the required number of registered, qualified electors of the city affected. In the event the governing body of said city determines that said petition is signed by the required percentage of registered, qualified electors, said city governing body shall forthwith make an order calling an election to be held within said city, subject to the provisions of section 34-106, Idaho Code, in accordance with the provisions of title 34, Idaho Code, which shall apply to the holding of the election provided for in this section, except where specifically modified herein. In addition to the other requirements of law, the notice of election shall notify the electors of the issue to be voted upon at said election. [1947, ch. 274, § 17, p. 870; am. 1995, ch. 118, § 12, p. 417; am. 2009, ch. 341, § 7, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes. — For this section as effective until January 1, 2011, see the preceding section, also numbered § 23-917.

The bracketed insertion in the first sentence was added by the compiler.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

23-918. Form of ballot. [Effective until January 1, 2011.] — The city or village clerk must furnish the ballots to be used in such election, which ballots must contain the following words:

“Sale of liquor by the drink, Yes,”

“Sale of liquor by the drink, No,”

and the elector in order to vote must mark an “X” opposite one (1) of the questions in a space provided therefor. [1947, ch. 274, § 18, p. 870.]

STATUTORY NOTES

Compiler's Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 23-918.

JUDICIAL DECISIONS

Cited in: Nampa Lodge No. 1389 Benevolent & Protective Order of Elks v. Smylie, 71 Idaho 212, 229 P.2d 991 (1951); McBride v. Hopper, 84 Idaho 350, 372 P.2d 401 (1962).

23-918. Form of ballot. [Effective January 1, 2011.] — The county clerk must furnish the ballots to be used in such election, which ballots must contain the following words:

“Sale of liquor by the drink, Yes,”
 “Sale of liquor by the drink, No,”

and the elector in order to vote must indicate the elector’s choice opposite one (1) of the questions in a space provided therefor. [1947, ch. 274, § 18, p. 870; am. 2009, ch. 341, § 8, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, in the introductory language, substituted “county clerk” for “city or village clerk”; and, in the ballot language, substituted “must indicate the elector’s choice” for “must mark an ‘X’.”

Compiler’s Notes. — For this section as effective until January 1, 2011, see the preceding section, also numbered § 23-918.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

23-919. Effect of election — Liquor store sales not affected. [Effective until January 1, 2011.] — Upon a canvass of the votes cast, the clerk of the city shall certify the result thereof to the director. If a majority of the votes cast are “Sale of liquor by the drink, Yes,” licenses shall be issued in said city as in this act provided. If a majority of the votes cast are “Sale of liquor by the drink, No,” then no licenses shall be issued in said city unless thereafter authorized by a subsequent election in said city; provided, however, that nothing herein contained shall be construed to prevent or prohibit the sale of liquor at or by a state liquor store or state distributor. [1947, ch. 274, § 19, p. 870; am. 1974, ch. 27, § 27, p. 811.]

STATUTORY NOTES

Compiler’s Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 23-919.

For words “this act”, see Compiler’s Notes, § 23-901.

JUDICIAL DECISIONS

ANALYSIS

Construction.
 Loss of license.

Construction.

Act providing for issuance of liquor licenses must be construed as a whole in determining whether effect of negative local option election automatically terminates license, or whether license remains in effect until its expiration date. Nampa Lodge No. 1389 Be-

nevolent & Protective Order of Elks v. Smylie, 71 Idaho 212, 229 P.2d 991 (1951).

Loss of License.

Negative subsequent local option election in city held on March 14, 1950, did not terminate state, city, and county licenses issued to

plaintiffs on effective date of election, where licenses issued carried termination date of December 31, 1950, since legislature intended, because of substantial fees exacted and failure to insert refunding clause, that holders of licenses should be protected against loss of license prior to termination

date unless the licensee was at fault. *Nampa Lodge No. 1389 Benevolent & Protective Order of Elks v. Smylie*, 71 Idaho 212, 229 P.2d 991 (1951).

Cited in: *McBride v. Hopper*, 84 Idaho 350, 372 P.2d 401 (1962).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 79-86.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 85 et seq.

23-919. Effect of election — Liquor store sales not affected. [Effective January 1, 2011.] — Upon a canvass of the votes cast, the county board of canvassers shall certify the result to the city who shall report the results to the director. If a majority of the votes cast are “Sale of liquor by the drink, Yes,” licenses shall be issued in said city as in this chapter provided. If a majority of the votes cast are “Sale of liquor by the drink, No,” then no licenses shall be issued in said city unless thereafter authorized by a subsequent election in said city; provided, however, that nothing herein contained shall be construed to prevent or prohibit the sale of liquor at or by a state liquor store or state distributor. [1947, ch. 274, § 19, p. 870; am. 1974, ch. 27, § 27, p. 811; am. 2009, ch. 341, § 9, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, in the first sentence, substituted “county board of canvassers” for “clerk of the city” and “certify the result to the city who shall report the results” for “certify the result thereof”; and, in the second sentence, substituted “chapter” for “act.”

Compiler’s Notes. — For this section as effective until January 1, 2011, see the preceding section, also numbered § 23-919.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

23-920. Subsequent elections. — A similar election may be subsequently called and held upon the issue of whether the sale of liquor by the drink shall be prohibited or, if prohibited, then an election to determine whether the sale of liquor by the drink shall be licensed. Such subsequent election shall be held upon the filing of a petition, as provided in section 23-917, signed by the requisite percentage of qualified electors. No such subsequent election shall be held prior to November 1, 1949, or oftener than two (2) years after the holding of any such subsequent election. [1947, ch. 274, § 20, p. 870.]

JUDICIAL DECISIONS

Loss of License.

Negative subsequent local option election in city held on March 14, 1950, did not terminate state, city, and county licenses issued to plaintiffs on effective date of election, where licenses issued carried termination date of

December 31, 1950, since legislature intended, because of substantial fees exacted and failure to insert refunding clause, that holders of licenses should be protected against loss of license prior to termination date unless the licensee was at fault. *Nampa*

Lodge No. 1389 Benevolent & Protective Order of Elks v. Smylie, 71 Idaho 212, 229 P.2d 991 (1951).

Cited in: McBride v. Hopper, 84 Idaho 350, 372 P.2d 401 (1962).

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 95, 104 et seq.

23-921. No retail sale except by the drink. — It shall be unlawful for any licensee to sell, keep for sale, dispense, give away, or otherwise dispose of any liquor in the original containers or otherwise than by retail sale by the drink. [1947, ch. 274, § 21, p. 870.]

JUDICIAL DECISIONS

Cited in: McBride v. Hopper, 84 Idaho 350, 372 P.2d 401 (1962).

23-922, 23-922A. Bartenders — Permits — Qualifications — Penalty — Display of permit to peace officer. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised (1947, ch. 274, § 22, p. 870; am. 1957, ch. 61, § 1, p. 104; am. 1957, ch. 83, § 1, p. 133; am. 1963, ch. 10, § 1, p. 20; am. 1969, ch. 406, § 2, p. 1126; am. 1971, ch. 135, § 1, p. 521; am. 1972, ch. 330, § 3, p. 828; am. 1974, ch. 27, § 28, p. 811; I.C., § 23-922A, as added by 1976, ch. 33, § 1, p. 70; am. 1977, ch. 143, § 2, p. 316), were repealed by S.L. 1982, ch. 45, § 1.

23-923. Bartenders — Bonds. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1947, ch. 274, § 22-A, p. 870; am. 1951, ch. 203, § 1, p. 431, was repealed by S.L. 1955, ch. 178, § 2, p. 367.

23-924, 23-925. Bartenders — Renewal and revocation of permit — Unlawful employment. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised (1947, ch. 274, §§ 23, 23-A, p. 870; reen. 1949, ch. 277, § 3, p. 567; am. 1955, ch. 178, § 3, p. 367; am. 1974, ch. 27, § 29, p. 811), were repealed by S.L. 1982, ch. 45, § 1.

23-925a. Railroad companies — Exception. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised (1947, ch. 274, § 23-B, as added by 1949, ch. 277, § 3, p. 567), was repealed by S.L. 1982, ch. 45, § 1.

23-926. Destruction of stamps — Sanitary requirements. — It shall be the duty of any licensee hereunder immediately upon emptying any

liquor container to deface, so that the same may not again be used, all government or state stamps or labels. Any licensed premises shall be maintained in sanitary condition according to the requirements of chapter 16, title 39, Idaho Code, and any city ordinances pertaining thereto. [1947, ch. 274, § 24, p. 870; am. 1974, ch. 247, § 1, p. 1624.]

23-927. Hours of sale of liquor. — (1) No liquor shall be sold, offered for sale, or given away upon any licensed premises, and all liquor not in sealed bottles must be locked in a separate room or cabinet during the following hours:

a. Sunday, Memorial Day, Thanksgiving and Christmas from 1 o'clock A.M., to 10 o'clock A.M. the following day; provided however, that on any Sunday not otherwise being a prescribed holiday, it shall be lawful for a licensee having banquet area or meeting room facilities, separate and apart from the usual dispensing area (bar room) and separate and apart from a normal public dining room unless such dining room is closed to the public, to therein dispense liquor between the hours of 2 o'clock P.M. and 11 o'clock P.M. to bona fide participants of banquets, receptions or conventions for consumption only within the confines of such banquet area or meeting room facility.

b. On any other day between 1 o'clock A.M. and 10 o'clock A.M.

c. When any city or county has any ordinance further limiting the hours of sale of liquor, by the drink, then such hours shall be fixed by such ordinance.

(2) A county or city may, however, by ordinance, allow the sale of liquor by the drink on a Sunday, Memorial Day and Thanksgiving, and may also extend until 2 o'clock A.M. the hours of the sale of liquor by the drink.

(3) Any patron present on the licensed premises after the sale of liquor has stopped as provided in subsection (1) and subsection (2) above shall have a reasonable time, not to exceed thirty (30) minutes, to consume any beverages already served.

(4) Any person who consumes or intentionally permits the consumption of any alcoholic beverage upon licensed premises after the time provided for in subsection (3) shall be guilty of a misdemeanor.

(5) It shall be the duty of every person who is employed at or upon a licensed premises or who owns or manages a licensed premises and is present upon the licensed premises during the hours and at the time set forth in subsection (1) and subsection (2) of this section to lock up and keep locked up in a locked room or locked cabinet all unsealed containers of liquor during the hours and at the times set forth in subsection (1) and subsection (2) of this section, and any such person who fails to perform the duty provided herein shall be guilty of a misdemeanor. [1947, ch. 274, § 25, p. 870; am. 1971, ch. 95, § 1, p. 207; am. 1977, ch. 143, § 3, p. 316; am. 1986, ch. 223, § 1, p. 609; am. 1987, ch. 110, § 1, p. 222; am. 1989, ch. 64, § 8, p. 101; am. 2003, ch. 284, § 1, p. 769; am. 2008, ch. 248, § 2, p. 729.]

STATUTORY NOTES

Cross References. — Hours of sale of beer, § 23-1012.

Punishment for violation of chapter, § 23-935.

Sale of liquor by state stores, § 23-307.

Amendments. — The 2008 amendment, by ch. 248, deleted paragraph (1)c. which

read: "On any day of a general or primary election until after the time when the polls are closed. There is no prohibition against the sale of liquor by the drink during city elections unless the city has enacted an ordinance prohibiting such sales."

JUDICIAL DECISIONS

ANALYSIS

Sunday sales.

Venue for action.

Sunday Sales.

Defects in notices for revocation of liquor license and forfeiture of bond were immaterial where state showed by direct proof that defendant sold liquor on Sunday. *State ex rel. Summers v. Lake Tavern, Inc.*, 76 Idaho 111, 278 P.2d 192 (1954).

Venue for Action.

Proper venue for action by state to recover penalty against holder of liquor license and

surety for sale of liquor after 1:00 A.M. on Sunday was the county where the liquor was sold. *State ex rel. Summers v. Lake Tavern, Inc.*, 73 Idaho 377, 252 P.2d 831 (1953).

Cited in: *State v. Adair*, 70 Idaho 486, 222 P.2d 741 (1950); *Leseekatos v. Koehler*, 79 Idaho 21, 310 P.2d 801 (1957).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 226 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 307, 308.

23-928. Sale away from licensed premises prohibited — Gambling prohibited. — (1) It shall be unlawful for any licensee to sell, give away, dispense, vend, or deliver any liquor in any fashion or by means or device, except upon the licensed premises.

(2) It shall be unlawful for any licensee granted a license under the authority of title 23, Idaho Code, to permit, conduct, play, carry on, open or cause to be opened any gaming in or upon the licensed premises or in or upon any premises directly connected by a door, hallway, or other means of access from the licensed premises. Any licensee authorized under the authority of this title and who is also authorized by other Idaho law to conduct the lawful activities of lottery, bingo, raffles, and pari-mutuel betting on the licensed premises shall be exempt from the provisions of this subsection as long as the lawful activities are conducted in conformity with statute and rules promulgated pursuant thereto. [1947, ch. 274, § 26, p. 870; am. 1997, ch. 343, § 1, p. 1027.]

JUDICIAL DECISIONS

Cited in: *Morris v. Hopper*, 84 Idaho 143, 369 P.2d 44 (1962); *Prendergast v. Dwyer*, 88 Idaho 278, 398 P.2d 637 (1965); *State, Dep't of*

Law Enforcement v. Engberg, 109 Idaho 530, 708 P.2d 935 (Ct. App. 1985).

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 351 et seq.

23-929. Restriction of sales by licensee. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section, which comprised 1947, ch. 274, § 27, p. 870; am. 1955, ch. 262, § 2, p. 630; reen. 1961, ch. 28, § 2, p. 37; am. 1967, ch. 18, § 1, p. 36; am. 1972, ch. 330, § 4, p. 828; am. 1975, ch. 179,

§ 1, p. 485; am. 1987, ch. 212, § 5, p. 448; am. 1991, ch. 269, § 1, p. 660, was repealed by S.L. 1999, ch. 59, § 9, p. 151, effective July 1, 1999.

23-930. Officers may examine premises. — The director or his duly authorized representative, the sheriff of any county, a constable, or other police officer, shall have the right at any time to make an examination of the premises of any licensee as to whether the laws of the state of Idaho, the rules and regulations of the director, and the ordinances of any city are being complied with and shall also have the right to inspect the cars of any railroad system licensed under this act. [1947, ch. 274, § 28, p. 870; am. 1974, ch. 27, § 30, p. 811.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-901.

23-931. Advertising prohibited. — It shall be unlawful for any licensee to adopt or use any name, sign or advertisement outside of the licensed premises advertising the handling or sale of liquor. [1947, ch. 274, § 29, p. 870.]

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 196 et seq.

23-932. Director to make regulations — Furnish forms and records. — For the purpose of the administration of this act the director shall make, promulgate and publish such rules and regulations as the said director may deem necessary for carrying out the provisions of this act and for the orderly and efficient administration hereof, and except as may be limited or prohibited by law and the provisions of this act, such rules and regulations so made and promulgated shall have the force of statute. Every licensee shall advise himself of such rules and regulations, and ignorance thereof shall be no defense. Without limiting the generality of the foregoing provisions, the said director shall be empowered and it is made his duty to prescribe forms to be used in the administration of this act, the proof to be furnished and the conditions to be observed in the issuance of licenses, prescribing forms or records to be kept of the sale of liquor by stores,

prescribing notices required by this act or the regulations thereof, and the manner of giving and serving the same, prescribing, subject to the provisions of this act, the conditions and qualifications necessary to obtain a license, the books and records to be kept by the licensee, the form of returns to be made by them, and providing for the inspection of such licensed premises, specifying and describing the place and manner in which the liquor may be lawfully kept or stored, covering the conduct, management and equipment of premises licensed to sell liquor and make regulations respecting the sale and consumption of liquor in clubs, hotels and other places of business to licensees. [1947, ch. 274, § 30, p. 870; am. 1974, ch. 27, § 31, p. 811.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-901.

23-933. Suspension, revocation, and refusal to renew licenses. —

(1) The director may suspend, revoke, or refuse to renew a license issued pursuant to the terms of this chapter for any violation of or failure to comply with the provisions of this chapter or rules and regulations promulgated by the director or the state tax commission pursuant to the terms and conditions of this chapter. Procedures for the suspension, revocation, or refusal to grant or renew licenses issued under this chapter shall be in accordance with the provisions of chapter 52, title 67, Idaho Code.

(2) When the director determines to suspend such license, the affected licensee may petition the director prior to the effective date of the suspension requesting that a monetary payment be allowed in lieu of the license suspension. If the director determines such payment to be consistent with the purpose of the laws of the state of Idaho and is in the public interest, he shall establish a monetary payment in an amount not to exceed five thousand dollars (\$5,000). The licensee may reject the payment amount determined by the director, and instead be subject to the suspension provisions of subsection (1) of this section. Upon payment of the amount established, the director shall cancel the suspension period. The director shall cause any payment to be paid to the treasurer of the state of Idaho for credit to the state's general account in the state operating fund.

(3) The suspension of a license for the sale of beer or wine shall automatically result in the suspension of any license for the sale of liquor held by the same licensee and issued for the same premises or location. Such additional suspension shall be equal in length to and run concurrently with the period of the original suspension.

(4) When a proceeding to revoke or suspend a license has been or is about to be instituted, during the time a renewal application of such license is pending before the director, the director shall renew the license notwithstanding the pending proceedings, but such renewed license may be revoked or suspended without hearing if and when the previous license is, for any reason, revoked or suspended. [I.C., § 23-933, as added by 1980, ch. 223,

§ 2, p. 497; am. 1981, ch. 199, § 1, p. 351; am. 1991, ch. 50, § 1, p. 91; am. 1993, ch. 347, § 1, p. 1290.]

STATUTORY NOTES

Cross References. — State tax commission, § 63-101.

Prior Laws. — Former § 23-933, which comprised S.L. 1947, ch. 274, § 31, p. 870; am. 1974, ch. 27, § 32, p. 811, was repealed by S.L. 1980, ch. 223, § 1.

Effective Dates. — Section 3 of S.L. 1980, ch. 223 declared an emergency. Approved March 28, 1980.

JUDICIAL DECISIONS

Improperly Issued License.

The department of law enforcement (now state police) did not act beyond its jurisdiction in revoking a retail alcoholic beverage license that had been improperly issued to a second

convention center under § 23-903, even though the convention center itself had committed no unlawful acts or omissions. *Henson v. Department of Law Enforcement*, 107 Idaho 19, 684 P.2d 996 (1984).

DECISIONS UNDER PRIOR LAW

Burden of Proof.

The burden of proof in an action to revoke a liquor license was on appellant commissioner (now director) to prove that liquor by the drink had been sold between the hours of 1 A.M. and 10 A.M. on a specific date contrary to the provision of § 23-927 and the finding of the trial judge on review of action of the

commissioner (now director) would be sustained on appeal where such trial judge, while not specifically finding the sale of liquor as charged was not made, found that the appellant did not by the evidence sustain the burden of proof necessary to deprive respondent of his property. *Lesekatos v. Koehler*, 79 Idaho 21, 310 P.2d 801 (1957).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 139 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 222 et seq.

23-933A. Licenses — Suspension or revocation for violation of obscenity laws. — In the event of a conviction for a violation of chapter 41, title 18, Idaho Code, relating to obscenity, by any:

(1) licensee,

(2) agent of licensee or employee or licensee if such licensee knew or should have known in the exercise of reasonable diligence that said employee was violating the provisions of chapter 41, title 18, Idaho Code, and if the violation committed by any of the above occurred on, or in connection with, premises licensed under this act by such licensee, the director shall suspend the license of such licensee for a period of six (6) months. If such licensee, or his agent or employee, has previously been convicted of a violation of chapter 41, title 18, Idaho Code, relating to obscenity, which violation occurred on, or in connection with, the premises licensed under this act by such licensee, the director shall revoke the license of such licensee. [I.C., § 23-933A, as added by 1973, ch. 305, § 19, p. 655; am. 1974, ch. 27, § 33, p. 811.]

STATUTORY NOTES

Compiler's Notes. — The term "this act" means S.L. 1973, ch. 305, which is codified as §§ 18-1517A, 18-4101 to 18-4103, 18-4104, 18-4105, 18-4106 to 18-4110, 18-4113 to 18-4115, 23-933A, and 23-1037A. Probably, the

reference should be to "this chapter", being chapter 9, title 23, Idaho Code.

Effective Dates. — Section 22 of S.L. 1973, ch. 305 provided that the act should take effect on and after July 1, 1973.

23-933B. Procedure for other licensing authorities. — The licensing authority of any county or incorporated municipality shall have and exercise the same powers to revoke, suspend, or to refuse grant of renewal of a retailer's license issued or issuable by it, as are granted to the director in this act. The determination of any such licensing authority to revoke, suspend, or to refuse grant of renewal of any retailer's license, shall be upon the same grounds referred to in section 23-933, Idaho Code, and may also be upon the grounds that the licensee has violated an ordinance validly enacted by it and regulating, governing or prohibiting the sale, manufacture, transportation or possession of beer or intoxicating liquor and notice thereof shall be given, and proceedings to contest said determination allowed, as provided for in this act with respect to state licenses issued by the director. The order to show cause shall be addressed to the board of county commissioners of the county or to the city council of the incorporated municipality, requiring the commissioners or councilmen, or such representative as they may designate, to appear in response thereto. Service of the order to show cause and petition shall be ordered to be made upon the chairman of the board of county commissioners or mayor or city manager of the municipality, as the case may be. [I.C. § 23-933B, as added by 1977, ch. 143, § 4, p. 316.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-901.

23-934. Unlicensed rooms unlawful — Exception. — It shall be unlawful for any person to keep or maintain any rooms or premises in which liquor is received or kept, whether owned by such person or by another, or to which liquor is brought, for consumption on the premises by members of the public or of any club, incorporated or unincorporated, or a corporation or association, unless such person and the premises are licensed under this act, except as provided under a liquor catering permit. [I.C., § 23-934, as added by 1955, ch. 237, § 1, p. 534; am. 1965, ch. 211, § 1, p. 484.]

STATUTORY NOTES

Compiler's Notes. — Section 23-934 as added by S.L. 1955, ch. 237, § 1, p. 534 is a reenactment of S.L. 1947, ch. 274, § 31-A, p. 870 which was compiled as § 23-934 and which was not repealed.

For words "this act", see Compiler's Notes, § 23-901.

Effective Dates. — Section 2 of S.L. 1955, ch. 227 declared an emergency. Approved March 15, 1955.

23-934A. Alcohol beverage catering permit — Application. — An alcohol beverage catering permit is a permit issued pursuant to this section which authorizes the permittee to serve and sell liquor by the drink, beer and wine, or beer, or wine, at a party or convention, and not to exceed three (3) consecutive days. An alcohol beverage catering permit shall be limited to authorization to sell liquor or beer or wine, or any combination thereof, based upon the type of license which the applicant possesses. Applications for such permit shall be made to the city within which the liquor, beer or wine is to be served, or if not within a city then to the county, on such form as prescribed by the city or county which shall contain at a minimum, but not limited to, the following information:

(1) The name and address of the applicant and the number of his state liquor, beer or wine license.

(2) The dates and hours during which the permit is to be effective, not to exceed three (3) consecutive days.

(3) The names of the organizations, groups, or persons sponsoring the event.

(4) The address at which the liquor, beer or wine is to be served, and if a public building, the rooms in which the liquor, beer or wine is to be served.

The application shall be verified by the applicant and filed with the appropriate governing body or its designee. A filing fee in the amount of twenty dollars (\$20.00) for each day the permit is to be effective shall be paid to the treasury of the governing body which shall not be refunded in any event. Any alcohol beverage catering permit shall be valid only within the issuing jurisdiction. [I.C., § 23-934A, as added by 1965, ch. 211, § 2, p. 484; am. 1970, ch. 258, § 1, p. 690; am. 1974, ch. 27, § 34, p. 811; am. 1987, ch. 58, § 1, p. 104; am. 1992, ch. 57, § 1, p. 167; am. 1999, ch. 58, § 2, p. 146.]

23-934B. Filing of application — Approval. — Upon the filing of an application for an alcohol beverage catering permit, the city council or its designee, or county commissioners receiving the application shall upon the advice and recommendation of the chief of police or sheriff, approve or disapprove the application and indicate the determination on the face of the application by indorsement signed by the clerk of the city or county. Copies of the application with signed indorsements thereon shall be mailed or delivered immediately to the chief of police or sheriff and the applicant, and a signed copy retained by the clerk. An application approved in this manner shall constitute an alcohol beverage catering permit. [I.C., § 23-934B, as added by 1965, ch. 211, § 2, p. 484; am. 1970, ch. 258, § 2, p. 690; am. 1974, ch. 27, § 35, p. 811; am. 1987, ch. 58, § 2, p. 104; am. 1992, ch. 57, § 2, p. 167; am. 1999, ch. 58, § 3, p. 146.]

23-934C. Regulatory and penalty provisions applicable. — All of the regulatory and penal provisions of title 23, Idaho Code, shall apply to the exercise of alcohol beverage catering permits, including the penalties for violations thereof, except such provisions declared to be inapplicable to alcohol beverage catering permits by rules prescribed by the director of the Idaho state police; provided, however, the director shall have no power to

declare inapplicable any of the provisions of section 23-927, Idaho Code. [I.C., § 23-934C, as added by 1965, ch. 211, § 2, p. 484; am. 1999, ch. 58, § 4, p. 146; am. 2000, ch. 469, § 64, p. 1450.]

STATUTORY NOTES

Compiler's Notes. — The name of the commissioner has been changed to the director on authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 40, § 3 (§ 67-2403).

23-935. Violation — Misdemeanors. — A violation of any of the provisions of this act by any agent, employee, servant, or other person in any way acting in behalf of the licensee shall be presumed to be a violation by the licensee. Any person violating any of the provisions of this act, except where a specific penalty is provided, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than the sum of one hundred dollars (\$100) nor more than the sum of three hundred dollars (\$300) or be imprisoned in the county jail for not less than thirty (30) days nor more than six (6) months, or both such fine and imprisonment. Any court in which a judgment of conviction against any licensee shall be entered shall forthwith certify a copy thereof to the director and the director shall thereupon give intended notice of revocation of any license to such convicted person. [1947, ch. 274, § 32, p. 870; am. 1970, ch. 258, § 3, p. 690; am. 1974, ch. 27, § 36, p. 811.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-901. cation," in the last sentence, should read "notice of intended revocation."

Possibly the words "intended notice of revo-

JUDICIAL DECISIONS

ANALYSIS

Application.

Indictment and information.

"Permitting" improper conduct.

Person acting in behalf of licensee.

Personal liability.

Application.

This section, providing that where no specific penalty is provided the defendant is guilty of a misdemeanor, does not apply to information charging sale of liquor without a license since a specific penalty is provided for offense in § 23-938. *State v. Martin*, 73 Idaho 545, 255 P.2d 713 (1953).

Indictment and Information.

The use of the word "feloniously" in information charging sale of liquor without a license excludes the possibility of the charging having reference to a misdemeanor the penalty for which is fixed by this section or as defined by this chapter. *State v. Grady*, 89 Idaho 204, 404 P.2d 347 (1965).

"Permitting" Improper Conduct.

Although it was uncontested that licensee described, to certain nude dancers employed at his establishment, the type of performance which would not be permitted under the terms of the liquor license, this fact alone did not absolve licensee of responsibility for the dancers' improper conduct; licensee was present at the performance and did not attempt to stop or control the performance when the dancers began to expose portions of their anatomies in violation of the requirements of § 23-1010A (now repealed), of which the licensee was admittedly aware. Thus, licensee's failure to act amounted to "permitting" the improper conduct at issue. *State ex*

rel. Richardson v. Pierandozzi, 117 Idaho 1, 784 P.2d 331 (1989).

Person Acting in Behalf of Licensee.

Where the record contains substantial and competent evidence that defendants' employee, the bartender, was engaged in gambling activity, the presumption is that the defendants, the licensees, knew that gambling was occurring in violation of § 23-928.

State, Dep't of Law Enforcement v. Engberg, 109 Idaho 530, 708 P.2d 935 (Ct. App. 1985).

Personal Liability.

Defendants were personally liable for violating the provisions of § 23-1010A (now repealed) where they conducted, permitted, or encouraged the violation. State ex rel. Richardson v. Pierandozzi, 117 Idaho 1, 784 P.2d 331 (1989).

23-936. Duty of public officers. — It is hereby made the duty of the prosecuting attorneys, sheriffs, and all constables and peace officers of the counties or municipalities knowing of any violation of this act to make complaint before the proper tribunal and perform the duties of their offices with respect to the prosecution and conviction of such offenders. Any such officer knowingly refusing to inform against or prosecute any offender under the provisions of this act shall be subject to action against him as provided in chapter 41, title 19, Idaho Code. [1947, ch. 274, § 33, p. 870; am. 1999, ch. 103, § 3, p. 327.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-901.

23-937. Violation a moral nuisance. — Any violation of the provisions of this act or any rule or regulation of the director promulgated hereunder shall constitute a moral nuisance under the provisions of section 52-204, Idaho Code. [1947, ch. 274, § 34, p. 870; am. 1974, ch. 27, § 37, p. 811.]

STATUTORY NOTES

Cross References. — Idaho Liquor Act, abatement of nuisances under § 23-701 et seq.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-901.

JUDICIAL DECISIONS

Construction.

It was not intended by the legislature that this statute repeal article 10 of the 1939 act, it merely made the injunctive relief in the 1947 act supplemental to that of the 1939 act. State ex rel. Good v. Boyle, 67 Idaho 512, 186 P.2d

859 (1947); State ex rel. Good v. Holmes, 67 Idaho 525, 186 P.2d 867 (1947); State ex rel. Good v. Evans, 67 Idaho 526, 186 P.2d 868 (1947); State ex rel. Good v. Hansen, 67 Idaho 528, 186 P.2d 869 (1947).

23-938. Selling liquor without license — Penalty. — Any person who sells or keeps for sale any liquor without a license as provided in this act shall be guilty of a felony and upon conviction thereof shall be fined not less than one thousand dollars (\$1,000) or [nor] more than five thousand dollars (\$5,000), or be imprisoned in the state prison for not less than one (1) year nor more than five (5) years, or both such fine and imprisonment. [1947, ch. 274, § 35, p. 870.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-901.

The bracketed word "nor" was inserted by the compiler.

JUDICIAL DECISIONS

ANALYSIS

Appeal.
Application of section.
Construction.
Effective date.
Information.
Instructions.
Sale without license.
Variance.

Appeal.

Where defendant was convicted of felony of illegal sale of liquor and, on appeal, supreme court remanded cause to trial court with directions to impose sentence of misdemeanor, such mandate was the law of the case and barred any attacks made against the trial court's judgment convicting defendant of misdemeanor. *State v. Garde*, 70 Idaho 86, 212 P.2d 655 (1949).

Application of Section.

This section applies to the whole state generally and not alone to cities and villages that have elected to license sale of liquor. *State v. Teninty*, 70 Idaho 1, 212 P.2d 412 (1949).

An illegal sale of liquor made prior to July 1, 1947, was punishable under § 23-602 instead of this section. *State v. Garde*, 69 Idaho 209, 205 P.2d 504 (1949); *State v. Garde*, 70 Idaho 86, 212 P.2d 655 (1949).

Construction.

Section 23-935, providing that where no specific penalty is provided the defendant is guilty of a misdemeanor, does not apply to information charging sale of liquor without a license since a specific penalty is provided for offense in this section. *State v. Martin*, 73 Idaho 545, 255 P.2d 713 (1953).

Effective Date.

This section became effective July 1, 1947. *State v. Garde*, 69 Idaho 209, 205 P.2d 504 (1949).

An illegal sale of liquor made prior to July 1, 1947 was punishable under § 23-602 instead of this section. *State v. Garde*, 69 Idaho 209, 205 P.2d 504 (1949).

Information.

Where information charged sale of liquor by defendant without a license, the failure to

allege that acts were done feloniously did not make information defective since this section, under which information was filed, expressly makes sale of liquor without a license a felony. *State v. Martin*, 73 Idaho 545, 255 P.2d 713 (1953).

Instructions.

In prosecution for selling liquor without a license, an instruction which stated this section includes "or keeps for sale" was not prejudicial on the ground that only offense charged was selling liquor where other instructions set forth essential elements of the offense. *State v. Martin*, 73 Idaho 545, 255 P.2d 713 (1953).

Sale Without License.

The gravamen of the offense defined by this section is the sale of any liquor without a license, regardless of its type or source, as distinguished from a felony charge against a licensee for sale of liquor except that purchased from the Idaho state liquor dispensary (now division), as prescribed by § 23-914. *State v. Grady*, 89 Idaho 204, 404 P.2d 347 (1965).

Variance.

Where information charged defendant with the sale of liquor without a license to one Beman when the evidence was uncontradicted that such sale was made to one Howard, variance was of such substantial nature as clearly to mislead defendant in preparation of his case and likely to place him in second jeopardy for the offense; thus, his motion for arrest of judgment should have been granted. *State v. Whitlock*, 82 Idaho 540, 356 P.2d 492 (1960).

Cited in: *Howard v. Felton*, 85 Idaho 286, 379 P.2d 414 (1963); *State v. Cantrell*, 94 Idaho 653, 496 P.2d 276 (1972).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 193, 194.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 335 et seq.

23-939. Separability. — If any clause, sentence, paragraph, section, or any part of this act, shall be declared and adjudged to be invalid and/or unconstitutional, such invalidity or unconstitutionality shall not affect, invalidate, or nullify the remainder of this act. [1947, ch. 274, § 36, p. 870.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-901.

23-940. Disposition of funds. — All moneys collected by the director under this act shall be paid over to the state treasurer and placed to the credit of the general fund. [1947, ch. 274, § 37, p. 870; am. 1974, ch. 27, § 38, p. 811.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-901.

23-941. Declaration of public policy. — It is hereby declared that the intent of this act is to restrict persons under the ages herein specified from entering, remaining in or loitering in or about certain places, as herein defined, which are operated and commonly known as taverns, barrooms, taprooms and cocktail lounges and which do not come within the definition of restaurant as herein contained and are not otherwise expressly exempted from the restrictions herein contained. [1955, ch. 195, § 1, p. 420.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1955, ch. 195, compiled as §§ 23-941 to 23-947.

JUDICIAL DECISIONS**Minors.**

The intent of the legislature was to restrict minors from entering taverns and barrooms, taprooms, and cocktail lounges and not to restrict them from entering restaurants and

other eating places, notwithstanding the fact that such places may also be licensed to sell liquor by the drink. *Roe v. Hopper*, 90 Idaho 22, 408 P.2d 161 (1965).

23-942. Definitions. — The following definitions shall apply in the interpretation of the enforcement of this act:

(a) "Licensee" shall mean any person licensed to sell liquor by the drink at retail pursuant to the provisions of chapter 9, title 23, Idaho Code, and any person licensed to sell beer for consumption on the premises where sold

pursuant to the provisions of chapter 10, title 23, Idaho Code, or county or municipal ordinance.

(b) "Place," as used in this act, means any room of any premises licensed for the sale of liquor by the drink at retail wherein there is a bar and liquor, bar supplies and equipment are kept and where beverages containing alcoholic liquor are prepared or mixed and served for consumption therein, and any room of any premises licensed for the sale of beer for consumption on the premises wherein there is a bar and beer, bar supplies and equipment are kept and where beer is drawn or poured and served for consumption therein.

(c) "Restaurant," as used in this act, means any restaurant, cafe, hotel dining room, coffee shop, cafeteria, railroad dining car or other eating establishment having kitchen and cooking facilities for the preparation of food and where hot meals are regularly served to the public. [1955, ch. 195, § 2, p. 420.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-941.

JUDICIAL DECISIONS

ANALYSIS

Construction.
Premises.

Construction.

Subsection (b) of this section is in no respect ambiguous and the substitution of "or" for "and" following the words "equipment are kept" would distort the definition of the word "place" and do violence to the common understanding of the language used by the legislature. *Roe v. Hopper*, 90 Idaho 22, 408 P.2d 161 (1965).

Premises.

Landing located immediately adjacent to entry of bar and staffed by a bouncer checking

for identification constituted part of a premises licensed to sell liquor or beer, giving a police officer statutory authority to request identification from defendant. When defendant refused to produce this identification, officer could legally arrest him and search him incident to that arrest, and drugs found on his person during that search were admissible. *State v. Conant*, 143 Idaho 797, 153 P.3d 477 (2007).

23-943. Persons under specified ages forbidden to enter, remain in or loiter at certain licensed places. — No person under the age of twenty-one (21) years shall enter, remain in or loiter in or about any place, as herein defined, licensed for the sale of liquor by the drink at retail, or sale of beer for consumption on the premises; nor shall any licensee of either such place, or any person in charge thereof, or on duty while employed by the licensee therein, permit or allow any person under the age specified with respect thereto to remain in or loiter in or about such place.

Provided, however, it is lawful for persons who are musicians and singers eighteen (18) years of age or older, to enter and to remain in any place as defined in section 23-942, Idaho Code, but only during and in the course of their employment as musicians and singers. Provided further, that it is lawful for persons who are nineteen (19) years of age or older to sell, serve, possess or dispense liquor, beer or wine in the course of their employment in

any place as defined in section 23-942, Idaho Code, or in any other place where liquor, beer or wine are lawfully present, so long as such place is the place of employment for such person under twenty-one (21) years of age. However the foregoing shall not permit the sale or distribution of any alcoholic beverages to any person under the ages specified for sale of alcoholic beverages. [1955, ch. 195, § 3, p. 420; am. 1971, ch. 59, § 1, p. 134; am. 1972, ch. 330, § 5, p. 828; am. 1972, ch. 332, § 1, p. 834; am. 1987, ch. 212, § 6, p. 448.]

JUDICIAL DECISIONS

Minors.

It was error to require defendant to place a sign reading “No Minors Allowed” over the doorway to a dining room operated by defen-

dant and connected by a door to a cocktail lounge also operated by defendant. *Roe v. Hopper*, 90 Idaho 22, 408 P.2d 161 (1965).

23-943A. Identification. — It shall be a misdemeanor for any person to refuse to present identification indicating age, when requested by a peace officer of the state of Idaho when: (a) he or she shall possess, purchase, attempt to purchase or consume alcoholic liquor, as defined by section 23-105, Idaho Code; or (b) he or she shall possess, purchase, attempt to purchase or consume beer as defined by section 23-1001, Idaho Code; or (c) he or she is on a premises licensed to sell liquor by the drink at retail, or licensed to sell beer for consumption on the premises. [I.C., § 23-943A, as added by 1977, ch. 264, § 1, p. 772.]

JUDICIAL DECISIONS

Premises.

Landing located immediately adjacent to entry of bar and staffed by a bouncer checking for identification constituted part of a premises licensed to sell liquor or beer, giving a police officer statutory authority to request identifica-

tion from defendant. When defendant refused to produce this identification, officer could legally arrest him and search him incident to that arrest, and drugs found on his person during that search were admissible. *State v. Conant*, 143 Idaho 797, 153 P.3d 477 (2007).

23-944. Exceptions from restriction on entering or remaining. — It shall not be unlawful for, nor shall section 23-943, Idaho Code, be construed to restrict, any person under the age of twenty-one (21) years from entering or being:

(1) upon the premises of any restaurant, as herein defined, or in any railroad observation or club car or any airplane of a commercial airline, notwithstanding that such premises may also be licensed for the sale of liquor by the drink or for the sale of beer for consumption on the premises or that alcohol beverages, or beer, or both, are prepared, mixed or dispensed and served and consumed therein.

(2) in any building, a part or portion of which is used as a place, as herein defined, provided such place is separated or partitioned from the remainder of said building and access to such place through a doorway or doorways or other means of ingress can be controlled to prevent persons under the ages specified with respect thereto in section 23-943, Idaho Code, from entering therein.

(3) in any baseball park, sports arena, convention center, multipurpose arena, theater that is presenting live performances or fairgrounds, notwithstanding that such premises or any portion thereof may be licensed for the sale of liquor by the drink, wine or beer for consumption on the premises or that such products are dispensed and served and consumed therein; provided, that the person under the age of twenty-one (21) years is attending a lawful activity, show, exhibition, performance or event on the premises or is required to be present as a condition of his employment. It is lawful for persons under the age of twenty-one (21) years to enter and remain in a baseball park, sports arena, convention center, multipurpose arena, theater that is presenting live performances or fairgrounds so long as the activity, show, exhibition, performance or event is lawful and the person does not violate section 23-949, Idaho Code.

(4) upon the premises of any licensed winery notwithstanding that such premises or any portion thereof may also be licensed for the sale of beer or wine for consumption on the premises or that wine is dispensed and served and consumed therein.

(5) upon the licensed premises of a wine retailer, wholly owned and operated by a licensed winery which retails exclusively the products of that winery.

(6) at a location, other than a liquor, beer, or wine licensed premises, authorized to serve alcohol beverages under a valid alcohol beverage catering permit.

(7) in any movie theater that is allowed to sell beer or wine for consumption on the premises pursuant to a valid license and which movie theater had a license that was valid and not suspended or revoked on January 1, 2006. No films, still pictures, electronic reproductions or other visual reproductions which are in violation of chapter 41, title 18, Idaho Code (indecent and obscenity), or are in violation of federal law regarding pornography, indecent or obscenity shall be shown or displayed on the premises. As used in this subsection, "movie theater" means a motion picture theater that is being utilized solely for exhibition of a motion picture. [1955, ch. 195, § 4, p. 420; am. 1972, ch. 330, § 6, p. 828; am. 1972, ch. 332, § 2, p. 834; am. 1987, ch. 212, § 7, p. 448; am. 1990, ch. 320, § 1, p. 876; am. 1999, ch. 58, § 5, p. 146; am. 2000, ch. 361, § 1, p. 1198; am. 2003, ch. 111, § 2, p. 348; am. 2006, ch. 378, § 1, p. 1171.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 378, added subsection (7).

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates. — Section 2 of S.L. 2000, ch. 361, declared an emergency. Approved April 14, 2000.

Section 3 of S.L. 2006, ch. 378 declared an emergency. Approved April 7, 2006.

JUDICIAL DECISIONS

Cited in: *Roe v. Hopper*, 90 Idaho 22, 408 P.2d 161 (1965).

23-945. Posting signs as to restriction. — Every licensee herein referred to shall keep a sign conspicuously posted over or near each entrance to any place from which persons under twenty-one (21) years are herein restricted giving public notice of such fact. The wording and size of such signs shall be in accordance with such regulations as the director may prescribe. [1955, ch. 195, § 5, p. 420; am. 1972, ch. 330, § 7, p. 828; am. 1972, ch. 332, § 3, p. 834; am. 1974, ch. 27, § 39, p. 811; am. 1987, ch. 212, § 8, p. 448.]

23-946. Statement made by licensees of premises operated as restaurants — Indorsement upon license. — (a) Every applicant for a state license for the sale of liquor by the drink or for the sale of beer for consumption on the premises claiming that the premises for which such license is sought constitute and are operated as a restaurant, as herein defined, shall, on each application for state license and on each application for renewal of license, state that such premises constitute and are operated as such restaurant. Upon issuance of state license for the sale of liquor by the drink or for the sale of beer for consumption on the premises, for premises constituting and operated as a restaurant, the licensee of which has made the proper statement on the application, the director shall indorse on the face of the license the fact that it has been issued to a restaurant as herein defined. Unless such statement shall have been filed with the director and his said indorsement shall appear on the face of the license, the restrictions contained in section 23-943, Idaho Code, shall apply, notwithstanding that such premises may in fact constitute and be operated as a restaurant, and the posting of signs as provided for in section 23-945, Idaho Code, shall be required. The filing of any false statement on the application as herein required shall be grounds for suspension or revocation of license. If premises, licensed as a restaurant under this act, subsequently ceases to meet the qualifications of a restaurant, as defined in section 23-942, Idaho Code, the restrictions contained in section 23-943, Idaho Code, shall apply and the posting of signs as provided for in section 23-945, Idaho Code, shall be required. In such event the licensee shall advise the director, by mail, that his premises no longer constitute a restaurant, so that the license may be modified accordingly.

(b) The powers of the director to make, promulgate and publish rules and regulations as set forth in section 23-932, Idaho Code, shall apply to sections 23-941 to 23-946, Idaho Code. [1955, ch. 195, § 5, p. 420; am. 1957, ch. 45, § 1, p. 80; am. 1974, ch. 27, § 40, p. 811; am. 1991, ch. 137, § 8, p. 320.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", 1974, ch. 27, provided the act should take effect on and after July 1, 1974.
see Compiler's Notes, § 23-941.

Effective Dates. — Section 196 of S.L.

JUDICIAL DECISIONS

Cited in: *Roe v. Hopper*, 90 Idaho 22, 408 P.2d 161 (1965).

23-947. Violations of act a misdemeanor. — The violation of any of the provisions of this act shall constitute a misdemeanor. [1955, ch. 195, § 7, p. 420.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-941.

23-948. Waterfront resorts — Licensing even if outside corporate limits of city. — (a) Nothing contained in section 23-903, Idaho Code, shall prohibit the issuance of a license to the owner, operator or lessee of a waterfront resort, even if situated outside the incorporated limits of a city. The provisions of section 23-910, Idaho Code, shall apply to licenses issued under the provisions of this section. For the purpose of this section, a waterfront resort shall comprise real property with not less than two hundred (200) feet of lake frontage upon a lake or reservoir as defined by the army corps of engineers of not less than one hundred and sixty (160) acres, or river frontage upon a river with at least an average six (6) months' flow of eleven thousand (11,000) cubic feet per second, and shall be open to the public, where people assemble for the purpose of vacationing, boating or fishing, and each waterfront resort must have suitable docks or permanent improved boat launching facilities not less than sixteen (16) feet in width on property owned or leased by the resort operator or on property contiguous thereto owned by this state or the federal government open to the public for recreational uses for the purpose of caring for vacationers, or other recreational users and either of the following:

(1) Hotel or motel accommodations for not less than fifty (50) persons, including a full service restaurant which serves regularly at least two (2) meals per day to the public during a continuous period of at least four (4) months per year; or

(2) A building of not less than three thousand (3,000) square feet of public use floor space, including a full service restaurant which serves regularly at least two (2) meals per day to the public during a continuous period of at least four (4) months per year and paved or gravelled parking for fifty (50) automobiles on the operator's owned or leased property and any contiguous property upon which are the docks or boat launching facilities described above.

(b) The fees for licenses granted under the provisions of this section shall be the same as those prescribed for golf courses as set forth in section 23-904, Idaho Code, unless said resort be located within the corporate limits of a city or village, in which case the license fee shall be the same as for other licensees within such corporate limits.

(c) The provisions of this section shall not be construed to interfere with the privileges of the holder of a lake resort license issued under section 23-948, Idaho Code [this section], prior to the effective date of this section. [I.C., § 23-948, as added by 1959, ch. 151, § 1, p. 348; am. 1967, ch. 123, § 1, p. 118; am. 1986, ch. 145, § 1, p. 407; am. 1988, ch. 333, § 1, p. 999.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion in subsection (c) was inserted by the compiler.
The language "the effective date of this section," in subsection (c), was added to this

section by S.L. 1986, ch. 145, § 1, which was effective July 1, 1986.
Effective Dates. — Section 2 of S.L. 1988, ch. 333 declared an emergency. Approved April 6, 1988.

JUDICIAL DECISIONS

Constitutionality.
The classification created by this section and § 23-903 does not violate the equal protection clause of U.S. Const., Amend. 14 or Idaho Const., Art. I, § 2. *State v. Cantrell*, 94 Idaho 653, 496 P.2d 276 (1972).

Cited in: *Adams v. Department of Law Enforcement*, 99 Idaho 255, 580 P.2d 858 (1978).

23-949. Persons not allowed to purchase, possess, serve, dispense, or consume beer, wine or other alcoholic liquor. — It is unlawful for any person under the age of twenty-one (21) years to purchase, attempt to purchase, possess, serve, dispense, or consume beer, wine or other alcoholic liquor; provided, however, that any person who is nineteen (19) years of age or older may sell, serve, possess and dispense liquor, beer or wine in the course of his employment in any place as defined in section 23-942, Idaho Code, or other place where liquor, beer or wine are lawfully present so long as such place is the place of employment for such person under twenty-one (21) years of age.
For purposes of this section, a person shall also be deemed to "possess" alcohol that has been consumed by the person, without regard to the place of consumption.

Any person violating the provisions of this section shall be guilty of a misdemeanor punishable in accordance with the schedule set forth in section 18-1502, Idaho Code. [I.C., § 23-949, as added by 1961, ch. 18, § 1, p. 21; am. 1972, ch. 330, § 8, p. 828; am. 1978, ch. 374, § 1, p. 980; am. 1981, ch. 222, § 4, p. 412; am. 1982, ch. 110, § 5, p. 311; am. 1987, ch. 212, § 9, p. 448; am. 2000, ch. 334, § 1, p. 1125.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1961, ch. 18 declared an emergency. Approved February 7, 1961.

Section 16 of S.L. 1987, ch. 212 declared an emergency. Approved March 31, 1987.

JUDICIAL DECISIONS

ANALYSIS

Evidence of age.
Exceptions.
Possession.

Evidence of Age.
Where there was nothing in the record to show that the defendant's physical appearance, standing alone, could sustain a conclusion that he was of age, but where there was

testimony by both the defendant and other witnesses that he purchased beer, it was permissible for the jury to take into account the common knowledge of the legal age for the purchase and consumption of alcohol. *State v.*

Espinoza, 133 Idaho 618, 990 P.2d 1229 (Ct. App. 1999).

Exceptions.

In prosecutions under this section, the state does not have to prove as part of its case in chief that the exceptions contained in § 23-1023 do not apply; rather, the burden is on the defendant to put the exception in issue before the state is required to present evidence negating the exception. *State v. Maland*, 124 Idaho 537, 861 P.2d 107 (Ct. App. 1993).

This section is a general statute dealing with illegal possession of a number of different beverages, while § 23-1023 deals specifically with illegal possession of beer; therefore,

the exceptions contained in § 23-1023 must apply to all prosecutions for illegal possession of beer, even if the prosecution is brought under this section. *State v. Maland*, 124 Idaho 537, 861 P.2d 107 (Ct. App. 1993).

Possession.

Where the state had shown defendant's proximity to beer in car and knowledge of its presence, but had not shown any other circumstances that would show he had control over the beer sufficient to establish constructive possession, the judgment of conviction was reversed. *State v. Maland*, 124 Idaho 537, 861 P.2d 107 (Ct. App. 1993).

23-950. Restriction against transfer of license. — (1) No license issued under the provisions of this chapter shall be renewed, transferred, assigned, leased or sold if:

(a) The state tax commission has notified the director and the licensee in writing that any tax imposed by chapters 30 and 36, title 63, Idaho Code, interest, penalty, and additional amount, which has accrued as a result of the operation of the licensed premises has been assessed as that term is defined in section 63-3045A, Idaho Code, against the licensee or any person operating the licensed premises with the permission of the licensee; or

(b) The department of labor has notified the director and the licensee in writing that a lien has been filed against the licensee or any person operating the licensed premises with the permission of the licensee, as a result of the operation of the licensed premises securing amounts due pursuant to chapter 13, title 72, Idaho Code.

(2) At such time as the state tax commission or the department of labor has notified the director and licensee as herein provided, the license issued for the premises the operation of which has resulted in the accrual of the tax for which the warrant or lien is outstanding shall be subject to levy and distraint pursuant to chapter 30, title 63, Idaho Code, or seizure pursuant to section 72-1360A, Idaho Code. [I.C., § 23-950, as added by 1981, ch. 6, § 1, p. 13; am. 1987, ch. 86, § 6, p. 161; am. 2005, ch. 5, § 1, p. 6; am. 2007, ch. 360, § 12, p. 1061.]

STATUTORY NOTES

Cross References. — State tax commission, § 63-101.

Amendments. — The 2007 amendment, by ch. 360, in subsections (1)(b) and (2), deleted "commerce and" following "department of".

Compiler's Notes. — Two sections numbered 23-950 were enacted in 1981 by Chap-

ter 6, § 1, and Chapter 56, § 1, effective July 1, 1981. Section 23-950 as enacted by chapter 56 was temporarily redesignated as § 23-951. The redesignation was made permanent by § 65 of S.L. 2000, ch. 469.

Effective Dates. — Section 18 of S.L. 2005, ch. 5 provided that the act should take effect on and after July 1, 2005.

23-951. Distilled spirits fuels. — (1) Any person, partnership, association or corporation registered to produce alcohol for use in motor fuels and in possession of a federal operating permit pursuant to title 27, code of

federal regulations, part 201.131 — 201.138 or part 201.64, 201.65 shall not be deemed to be making alcoholic liquor within the meaning of section 23-105, Idaho Code, provided:

- (a) Such person, partnership, association or corporation prior to commencing operation furnishes the Idaho state police with a true copy of the operating permit application described in title 27, code of federal regulations, part 201.137 or 201.65 and a true copy of the operating permit or other authorizing document;
- (b) Such person, partnership, association or corporation faithfully complies with all security and supervision requirements of the federal government; and
- (c) Alcohol possessed or produced under the federal operating permit is not used, sold or made available for human consumption.

(2) The Idaho state police shall maintain a list of persons, partnerships, associations or corporations in the state of Idaho who hold federal operating permits as described in subsection (1) of this section. [I.C., § 23-950, as added by 1981, ch. 56, § 1, p. 85; am. 2000, ch. 469, § 65, p. 1450.]

STATUTORY NOTES

Federal References. — 27 C.F.R. Part 201, referred to in subsection (1) and in subdivision (1)(a), was redesignated as 27 C.F.R. Part 19 and revised.

Compiler's Notes. — Two sections numbered 23-950 were enacted in 1981 by Chap-

ter 6, § 1, and Chapter 56, § 1, effective July 1, 1981. Section 23-950 as enacted by chapter 56 was temporarily redesignated as § 23-951. The redesignation was made permanent by § 65 of S.L. 2000, ch. 469.

23-952. Cross-country skiing facility — Licensing even if outside corporate limits of city. — Nothing contained in law shall prohibit the issuance of a license to the owner, operator or lessee of an actual cross-country skiing facility if situated five (5) or more miles outside the corporate limits of a city. The provisions of section 23-910, Idaho Code, shall be applicable to licenses issued pursuant to this section. For the purposes of this section, a cross-country skiing facility shall comprise real property, open to the public, with not less than fifteen (15) miles of groomed cross-country skiing trails, and overnight accommodations for not less than twenty (20) persons. The fees for licenses granted under the provisions of this section shall be the same as those prescribed for golf courses as set forth in section 23-904, Idaho Code. Not more than one (1) licensed premises shall be permitted on any cross-country skiing facility or within the area comprising the facility. [I.C., § 23-952, as added by 1987, ch. 32, § 3, p. 53.]

23-953. Racing facilities — Licensing. — Nothing contained in this chapter shall prohibit the issuance of a license to the owner, operator or lessee of a racing facility, even if situated outside the incorporated limits of a city. A "racing facility" means an actual, bona fide racing facility located on not less than twenty (20) contiguous acres with permanently erected seating of not less than one thousand (1,000) capacity, and which has a license to conduct pari-mutuel racing. The provisions of section 23-910, Idaho Code, shall apply to licenses issued under the provisions of this section. The fees

for licenses granted under the provisions of this section shall be the same as those prescribed for golf courses as set forth in section 23-904, Idaho Code. Licenses issued under the provisions of this section are not transferable. [I.C., § 23-953, as added by 1988, ch. 287, § 1, p. 921.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1988, ch. 287 declared an emergency. Approved March 31, 1988.

23-954. Theme parks — Licensing. — Nothing contained in this chapter shall prohibit the issuance of a license to the owner, operator or lessee of a theme park, even if situated outside the incorporated limits of a city. A “theme park” means a facility located on not less than forty (40) contiguous acres, and permanently constructed for the purpose of conducting, presenting or providing activities and services normally related to family oriented entertainment and recreational programs, which is open to the public and which provides meeting facilities. The provisions of section 23-910, Idaho Code, shall apply to licenses issued under the provisions of this section. The fees for licenses granted under the provisions of this section shall be the same as those prescribed for golf courses as set forth in section 23-904, Idaho Code. [I.C., § 23-954, as added by 1988, ch. 307, § 1, p. 962.]

23-955. Split ownership facility — Licensing. — Nothing contained in this chapter shall prohibit the issuance of a license to the owner, operator or lessee of a premises that has been, because of a split in ownership of the original premises, separated from a ski resort facility or golf course already licensed under the provisions of section 23-903, Idaho Code. The provisions of section 23-910, Idaho Code, shall be applicable to licenses issued pursuant to this section. The fees for licenses granted under the provisions of this section shall be the same as those prescribed for golf courses as set forth in section 23-904, Idaho Code. Licenses issued under the provisions of this section are not transferable. [I.C., § 23-955, as added by 1994, ch. 432, § 1, p. 1396; am. 1995, ch. 145, § 1, p. 612; am. 2004, ch. 259, § 1, p. 734.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1995, ch. 145 declared an emergency. Approved March 16, 1995.

23-956. Continuation of golf course liquor license following change of land use. — Nothing contained in this chapter shall prohibit the issuance of a license to the owner, operator, or lessee of a premises previously licensed as a golf course under the provisions of section 23-903, Idaho Code, following termination of the golf course use and conversion of the premises to another use or uses, provided that the golf course was licensed as a golf course under the provisions of section 23-903, Idaho Code, for a minimum of twenty (20) years prior to such termination. The provisions of section 23-910, Idaho

Code, shall be applicable to licenses issued pursuant to this section. The fees for licenses granted under the provisions of this section shall be the same as those prescribed for golf courses as set forth in section 23-904, Idaho Code, unless the premises is located within the incorporated limits of any city, in which case the fee shall be the same as that prescribed for a license in a city of that size as set forth in section 23-904, Idaho Code. Licenses issued under the provisions of this section are not transferable away from the premises. Upon termination of the golf course use, no part of the premises shall be eligible for the issuance of an additional license pursuant to section 23-955, Idaho Code, due to a split in ownership which occurs after such termination. The eligibility to obtain a license pursuant to this section following termination of the golf course use shall, in the event of a later split in ownership of the premises, be allocated to one (1) of the parcels resulting from such split, either by contract between the parties to the split or by grant or reservation in the deed of conveyance. In the event the contract between the parties or the deed of conveyance fails to specify which parcel retains eligibility under this section, eligibility shall be deemed to be retained by the parcel upon which is, or was, located the greater share of physical improvements at or within which alcohol was served prior to the split in ownership. Upon any further split of the parcel retaining eligibility to obtain a license pursuant to this section, the same restrictions shall apply to the new split in ownership and any future splits of the parcel retaining such eligibility, such that there shall never be more than one (1) license issued pursuant to this section for the land constituting the original golf course premises. Nothing in this section shall prohibit the issuance of a license to the owner, operator or lessee of any split-off parcel to the extent such parcel qualifies for a license under any other provision of this chapter. [I.C., § 23-956, as added by 2005, ch. 357, § 2, p. 1128.]

23-957. Year-round [resort] liquor license. — (1) Nothing in this chapter shall prohibit the issuance of not more than twelve (12) licenses to the owner, operator or lessee of beverage, lodging or dining facilities located and operated within the ownership or leasehold premises of a year-round resort.

(2) Nothing contained in this chapter shall prohibit the issuance of a license to the owner, operator or lessee of a golf course, ski resort, cross-country skiing facility or waterfront resort, as defined in sections 23-903, 23-903a and 23-948, Idaho Code, located within the ownership or leasehold premises of a year-round resort, provided that such license shall count against the maximum number of licenses allowed by subsection (1) of this section.

(3) No license issued to the owner, operator or lessee of beverage, lodging or dining facilities located and operated within the ownership or leasehold premises of a year-round resort shall be transferable to another location or facility located outside the ownership or leasehold premises of the year-round resort.

(4) The fees for licenses granted to the owner, operator or lessee of beverage, lodging or dining facilities located and operated within the ownership or leasehold premises of a year-round resort shall be the same as those prescribed for year-round resorts in section 23-904(10), Idaho Code.

(5) "Year-round resort" means a resort open to the public year around which offers all of the following within the ownership or leasehold premises of the resort:

- (a) Cross-country skiing on not less than thirty (30) kilometers of groomed cross-country skiing trails;
- (b) Alpine skiing on real property of not less than eight hundred fifty (850) acres, operating two (2) or more chair lifts with a vertical lift of two thousand eight hundred (2,800) feet or more, and having operating snowmaking equipment providing coverage to at least seventy-five (75) acres of skiing;
- (c) A golf course having:
 - (i) No less than eighteen (18) holes with greens, fairways and tees laid out and used in the usual and regular manner of a golf course;
 - (ii) A total distance of seven thousand (7,000) yards as measured by totaling the tee-to-green distance of all holes; and
 - (iii) The course planted in grass;
- (d) Mountain bike activities which include at least twelve (12) miles of single track trails, chair lift served access to at least two thousand eight hundred (2,800) feet of vertical descent and a full service bike rental and repair facility; and
- (e) At least seventy (70) private residences and accommodations available to provide overnight lodging and dining facilities serving at least two (2) meals per day for at least five hundred (500) persons located within the ownership or leasehold premises of the resort. [I.C., § 23-957, as added by 2006, ch. 449, § 2, p. 1333; am. 2008, ch. 178, § 2, p. 530.]

STATUTORY NOTES

Amendments. — The 2008 amendment, by ch. 178, substituted "12 (twelve) licenses" for "three (3) licenses" in subsection (1).

Compiler's Notes. — The bracketed insertion in the section heading was added by the compiler.

CHAPTER 10

BEER

SECTION.

- 23-1001. Definitions.
- 23-1002. Alcoholic content.
- 23-1003. Brewers', dealers' and wholesalers' licenses.
- 23-1004. Dealers' license fee.
- 23-1005. Qualifications of licensees.
- 23-1005A. Transfer of license — Fee — Application for approval.
- 23-1006. Records and returns of licensees — Investigations and examinations.
- 23-1007. Sales by dealers and wholesalers — Prohibited unless obtained from licensees — Consumption on premises prohibited — Minimum sale on licensed premises of unbroken packages or kegs.

SECTION.

- 23-1007A. Beer sold or donated for benevolent, charitable or public purposes — Permit required.
- 23-1008. Tax — Distribution — Rules — Reports.
- 23-1009. Retailers' local licenses.
- 23-1010. License to sell beer at retail — Application procedure and form — Showing of eligibility for license and disqualifications.
- 23-1010A. [Repealed.]
- 23-1011. Issuance of licenses.
- 23-1011A. Officers may examine premises.
- 23-1011B. Bars or taverns not allowed near churches or schools — Exceptions.
- 23-1012. Hours of sale.
- 23-1013. Restrictions concerning age.

SECTION.

- 23-1014. License fees.
- 23-1015. County retailers' license, when required, procedure.
- 23-1016. Municipal license also required — Procedure.
- 23-1017. Intention of preceding section.
- 23-1018. Sale of keg beer — Penalties.
- 23-1019. [Repealed.]
- 23-1020. Penalty.
- 23-1021. [Repealed.]
- 23-1022. Separability.
- 23-1023. Beer — Authorization to deliver.
- 23-1024. False representation as being twenty-one or more years of age a misdemeanor.
- 23-1025, 23-1026. [Repealed.]
- 23-1027. Certificate of approval required of manufacturer.
- 23-1028. Warehouse and records of wholesalers and dealers.
- 23-1029. Posting of prices.
- 23-1030. Size of containers.
- 23-1031. Extension of credit.
- 23-1032. [Repealed.]
- 23-1033. Financial interest in or aid to retailers prohibited — Certain aid permitted.
- 23-1033A. Prohibition of certain trade practices between brewers or dealers and wholesalers.
- 23-1034. Sanitation rules for retailers.
- 23-1035. Retailer's signs.

SECTION.

- 23-1036. Tap markers.
- 23-1037. Determination to revoke, suspend or refuse renewal of license by director — Monetary penalty.
- 23-1037A. Licenses — Suspension or revocation for violation of obscenity laws.
- 23-1038. Suspension, revocation, and refusal to renew licenses.
- 23-1039 — 23-1041. [Repealed.]
- 23-1042. Procedure for other licensing authorities.
- 23-1043. Notice of revocation or suspension to other licensing authorities.
- 23-1044. Procedure on refusal to grant license.
- 23-1045. Appeals.
- 23-1046. Separability.
- 23-1047. Payment of taxes on beer.
- 23-1048. Liability for payment of taxes on beer.
- 23-1049. Security for tax.
- 23-1050. [Repealed.]
- 23-1050A. Collection and enforcement.
- 23-1051. Regulations.
- 23-1052. License revocation or suspension for failure to pay or report tax.
- 23-1053. Audits of records of licensee.
- 23-1054. Refund of taxes.
- 23-1055. Unlawful sale, purchases and acts.
- 23-1056. Use of alternative method — Time when authorized.

23-1001. Definitions. — As used in this chapter:

(a) The word "beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of barley, malt and/or other ingredients in drinkable water.

(b) The word "brewer" means a person licensed to manufacture beer.

(c) "Certificate of approval" means a license issued to a person whose business is located outside of the state of Idaho, who sells beer to wholesalers or brewers located within the state of Idaho.

(d) The term "dealer" means a person licensed to import beer into this state for sale to a wholesaler.

(e) The word "director" means the director of the Idaho state police.

(f) The words "live performance" mean a performance occurring in a theater and not otherwise in violation of any provision of Idaho law.

(g) The word "person" includes any individual, firm, copartnership, association, corporation or any group or combination acting as a unit, and the plural as well as the singular number unless the intent to give a more limited meaning is disclosed by the context.

(h) The word "premises" means the building and contiguous property owned, or leased or used under government permit by a licensee as part of the business establishment in the business of sale of beer at retail, which property is improved to include decks, docks, boardwalks, lawns, gardens, golf courses, ski resorts, courtyards, patios, poolside areas or similar

improved appurtenances in which the sale of beer at retail is authorized under the provisions of law.

(i) The word “retailer” means a person licensed to sell beer to consumers at premises described in the license.

(j) The word “theater” means a room, place or outside structure for performances or readings of dramatic literature, plays or dramatic representations of an art form not in violation of any provision of Idaho law.

(k) The word “wholesaler” means any person licensed to sell beer to retailers, wholesalers, permittees or consumers and distribute beer from warehouse premises described in the license.

(l) All other words and phrases used in this chapter, the definitions of which are not herein given, shall be given their ordinary and commonly understood and acceptable meanings. [1935, ch. 132, § 1, p. 312; am. 1974, ch. 27, § 41, p. 811; am. 1976, ch. 123, § 1, p. 472; am. 1987, ch. 200, § 1, p. 421; am. 1989, ch. 291, § 1, p. 718; am. 1991, ch. 137, § 4, p. 320; am. 1994, ch. 14, § 4, p. 20; am. 1995, ch. 311, § 1, p. 1071; am. 2000, ch. 469, § 66, p. 1450; am. 2003, ch. 111, § 3, p. 348.]

JUDICIAL DECISIONS

Violations of Law.

Where charge made by the commissioner (now director) did not show a violation of any of the provisions of the law regulating the business of the brewer, it did not state any grounds for the contemplated revocation or suspension of such brewery license; therefore a court of equity would interfere by injunction to protect the litigant where it was made to appear that irreparable injury would result from further pursuit of the administrative process and the district court, being granted

jurisdiction in all cases by the constitution both in law and in equity, had jurisdiction of the suit by the brewery seeking to enjoin the commissioner (now director) from suspending or revoking its license on the grounds of an advertising plan it had been using. *Bohemian Breweries v. Koehler*, 80 Idaho 438, 332 P.2d 875 (1958).

Cited in: *Barth v. De Coursey*, 69 Idaho 469, 207 P.2d 1165 (1949); *State v. Rorvick*, 76 Idaho 58, 277 P.2d 566 (1954).

23-1002. Alcoholic content. — (1) Beer containing not more than six per cent (6%) of alcohol by weight may be manufactured, imported and/or sold and distributed in and into this state or possessed therein in the manner and under the conditions prescribed in this act and not otherwise.

(2) Beer containing more than four per cent (4%) of alcohol by weight shall be considered and taxed as wine. [1935, ch. 132, § 2, p. 312; am. 1988, ch. 301, § 1, p. 957.]

STATUTORY NOTES

Compiler's Notes. — The words “this act” refer to S.L. 1935, ch. 132, compiled as §§ 23-1001 to 23-1005, 23-1006, 23-1007, 23-1008, 23-1009, 23-1015 to 23-1017, 23-1020, and

23-1022. Probably the reference should be to “this chapter”, being chapter 10, title 23, Idaho Code.

23-1003. Brewers', dealers' and wholesalers' licenses. — (a) Before any brewer shall manufacture, or any dealer or wholesaler import or sell, beer within the state of Idaho he shall apply to the director for a license so to do. The application form shall be prescribed and furnished by the director and require that the applicant therein show that he possesses all the

qualifications and none of the disqualifications of a licensee. To determine qualification for a license, the director shall cause an investigation which shall include a fingerprint-based criminal history check of the Idaho central criminal history database and the federal bureau of investigation criminal history database. Each person listed as an applicant on an initial application shall submit a full set of fingerprints and the fee to cover the cost of the criminal history background check for such person with the application. The application shall also be accompanied by the required licensee fee; provided, that where the applicant is or will be within more than one (1) of the foregoing classifications he shall apply for each classification but shall pay only one (1) license fee, which shall be for the classification applied for requiring the highest fee. If the director is satisfied that the applicant possesses the qualifications and none of the disqualifications for such license, he shall issue a license for each classification applied for, subject to the restrictions and upon the conditions in this act specified, which license or licenses shall be at all times prominently displayed in the place of business of the licensee.

(b) Each wholesaler shall, in addition to the application, file with the director a notice in writing signed by the dealer or brewer and the wholesaler stating the geographic territory within which the wholesaler will distribute beer to retailers. Said territory will be the territory agreed upon between the dealer or brewer and the wholesaler and may not be changed or modified without the consent of both the dealer or brewer and the wholesaler. Provided however, nothing contained herein shall be interpreted to prohibit a brewer or dealer from permitting more than one (1) distributor for the same geographic territory.

(c) In the event that a wholesaler sells beer to a retailer who is located outside the geographical territory designated by such wholesaler on the notice provided for in subsection (b) of this section, the dealer or wholesaler who has designated the geographical territory in which the sale occurred may apply to a district court of this state for the issuance of an injunction enjoining sales of beer by the wholesaler outside of his designated geographical territory. The procedure for issuance of an injunction pursuant to this act shall be subject to the provisions of chapter 4, title 8, Idaho Code, and the Idaho Rules of Civil Procedure. Upon proof to the court that a wholesaler has made a sale of beer outside his designated geographical territory, the court shall issue an injunction directed to the wholesaler prohibiting sales of beer outside his designated geographical territory.

(d) Any brewer licensed within the state of Idaho who produces fewer than thirty thousand (30,000) barrels of beer annually, upon payment of a retailer's annual license fee, may be issued a brewer's retail beer license for the retail sale of the products of his brewery at his licensed premises or one (1) remote retail location, or both. Any brewer selling beer at retail or selling to a retailer must pay the taxes required in section 23-1008, Idaho Code, but need not be licensed as a wholesaler for the purpose of selling beer at the brewery or at one (1) remote retail location.

(e) Any brewer licensed within the state of Idaho who produces fewer than thirty thousand (30,000) barrels of beer annually, may be issued a

brewer's pub license. Upon payment of a retailer's annual license fee, and subject to the fees in sections 23-1015 and 23-1016, Idaho Code, a brewer may, at his licensed brewery, at one (1) remote retail location, or both, sell at retail the products of any brewery by the individual bottle, can or glass. Any brewer selling beer at retail or selling to a retailer must pay the taxes required in section 23-1008, Idaho Code, on the products of his brewery, but need not be licensed as a wholesaler for the purpose of selling beer at the brewery or at one (1) remote retail location.

(f) A brewer licensed under the provisions of subsection (d) or (e) of this section may be licensed as a wholesaler for the sale of beer to retailers other than at the licensed brewery and one (1) remote retail location and shall not be required to pay an additional fee therefor. Such brewer shall, however, comply with and be subject to all other regulations or provisions of law which apply to a wholesaler's license, save and except as such laws may restrict such sales at the licensed brewery or one (1) other remote retail location. The holder of a brew pub license shall not be disqualified from holding a retail wine license or wine by the drink license for the sale of wine at the brew pub premises on the grounds that said licensee is also licensed as a wholesaler. [1935, ch. 132, § 3, as added by 1943, ch. 167, § 2, p. 349; am. 1972, ch. 370, § 1, p. 1087; am. 1974, ch. 27, § 42, p. 811; am. 1987, ch. 22, § 1, p. 29; am. 1989, ch. 290, § 1, p. 716; am. 2001, ch. 284, § 2, p. 1014.]

STATUTORY NOTES

Compiler's Notes. — Chapter 4, title 8, Idaho Code, referred to in subsection (c) of this section, has been repealed. Now see I.R.C.P., Rule 65(a)-65(g).

For words "this act", see Compiler's Notes, § 23-1002.

Effective Dates. — Section 2 of S.L. 1972, ch. 370 provided that the act should take effect on and after July 1, 1972.

OPINIONS OF ATTORNEY GENERAL

Although the legislature failed to amend the § 23-1055(d) requirement that retailers purchase beer for resale only from licensed dealers or distributors, an Idaho court would find this requirement repealed by implication to the extent it conflicts with subsections (d) and (e) of this section and the exemption granted to small breweries from other requirements of a wholesaler's license. OAG 88-8.

This section allows an Idaho licensed

brewer who produces fewer than 30,000 barrels of beer annually to obtain a "brewer's retail beer license" or a "brewer's pub license." Although the two licenses differ in the types of beer products allowed to be sold by a licensee, both licenses permit the licensee to "sell at retail" at his own brewery and at one remote location, while further permitting the licensee to "sell to retailers" without having to be licensed as a wholesaler. OAG 88-8.

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 100.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 142.

23-1004. Dealers' license fee. — Every dealer for whom no license fee is elsewhere provided in this act shall, except as provided in section 23-1003, [Idaho Code,] pay to the state of Idaho an annual license fee of one hundred dollars (\$100), and a like amount for each separate warehouse used for the

purpose of, or in connection with, the importing of beer into this state. [1935, ch. 132, § 3-a, as added by 1943, ch. 167, § 2, p. 349.]

STATUTORY NOTES

Cross References. — License fees for brewers, wholesalers, and retailers, § 23-1014.

For words "this act", see Compiler's Notes, § 23-1002.

Compiler's Notes. — The bracketed insertion was added by the compiler.

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 167 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 267 et seq.

23-1005. Qualifications of licensees. — No license shall issue to an applicant for a dealer's or wholesaler's license unless the applicant is authorized to do business within the state of Idaho; nor shall such license be issued to an applicant whose license, or the license of any partner, has been revoked within two (2) years; nor to an applicant who, or if a partnership any partner of whom, has been convicted of any violation of any law of Idaho or of the United States regulating, governing, or prohibiting the sale of alcoholic beverages or intoxicating liquor. Any such license issued shall be revoked if the licensee ceases to have the qualifications, or acquires the disqualifications, in this section provided. [1935, ch. 132, § 3-b, as added by 1943, ch. 167, § 2, p. 349; am. 1992, ch. 315, § 2, p. 937; am. 1994, ch. 14, § 8, p. 20.]

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 114 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 146 et seq.

23-1005A. Transfer of license — Fee — Application for approval. —

(a) No brewer, dealer or wholesaler of beer license issued pursuant to section 23-1003, Idaho Code, or any beer retailer license issued pursuant to section 23-1010, Idaho Code, may be transferred to another person, including an executor, administrator, or trustee in bankruptcy of the estate of the licensee, unless the transferee shall first have obtained the approval of the director to such transfer upon application containing substantially the same information required of an applicant for a brewer's, dealer's, wholesaler's or retailer's beer license, as the case may be. If the transferee possesses all the qualifications and none of the disqualifications for such license, the director shall approve the transfer by issuing a license to the transferee. The fee for each transfer of a brewer's, dealer's, wholesaler's or retailer's beer license shall be twenty dollars (\$20.00), which fee shall accompany the application for transfer.

(b) Application for a transfer of any beer license from one location to another shall be made to the director on forms prescribed and furnished by the director. The director shall approve such transfer upon submission of the application and receipt by the director of a transfer fee of twenty dollars (\$20.00).

(c) The director, in his discretion, may deny the transfer of a license during the pendency [pendency] of any proceedings for suspension or revocation instituted pursuant to the provisions of this chapter. [I.C., § 23-1005A, as added by 1979, ch. 137, § 1, p. 433; am. 1991, ch. 28, § 2, p. 54.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion in subsection (c) was added by the compiler.

23-1006. Records and returns of licensees — Investigations and examinations. — Every licensed dealer, brewer and wholesaler shall have, and notify the director of, a place of business within the state of Idaho where such licensee will and shall keep a record of his or its imports into, and sales of beer within, the state, including the date, quantity, from whom purchased for import, the carrier or other person or means by whom or which transported for import, and the name and address of the vendee, and shall so keep such record of each such sale or import for a period of four (4) years thereafter. Such licensee shall, on or before the 15th day of each month, make a return to the director of the amount of beer sold in, and imported by him into, the state of Idaho for the preceding month, which shall be upon forms furnished by the director. The director may require such additional information to be included in such returns as shall assist him in determining whether or not such licensee is complying with, or violating, this act and whether or not all taxes and license fees provided for by this act are being fully paid. The director shall have the right at any time to make an examination of each dealer's, brewer's and wholesaler's books, records and premises, make an inventory and otherwise check the accuracy of such returns, and investigate for any violation of this act, and file, and retain in his office for not less than two (2) years, a report thereof. An application for, and acceptance of a license by, a dealer, brewer, wholesaler or retailer shall constitute consent to, and be authority for, entry by the director, or his authorized agents, upon any premises related to the licensee's business, or wherein are, or should be, kept, any of the licensee's books, records, supplies or other property related to said business, and to make the inventory, check and investigations aforesaid with relation to said licensee or any other licensee. [1935, ch. 132, § 3-c, as added by 1943, ch. 167, § 2, p. 349; am. 1974, ch. 27, § 43, p. 811; am. 1984, ch. 104, § 1, p. 242; am. 1999, ch. 129, § 1, p. 373; am. 2000, ch. 333, § 1, p. 1123.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-1002.

23-1007. Sales by dealers and wholesalers — Prohibited unless obtained from licensees — Consumption on premises prohibited — Minimum sale on licensed premises of unbroken packages or kegs. — Except as provided in section 23-1007A, Idaho Code, it shall be unlawful

for any dealer or wholesaler to sell for use within the state of Idaho any unbroken packages or kegs of beer produced, manufactured, imported or bought by such dealer except to licensed dealers, wholesalers, retailers to whom a license has been issued by the director, or to employees of the wholesaler or dealer; nor shall any dealer or wholesaler allow for a consideration such beer to be consumed upon the premises of such dealer or wholesaler; provided, however, that any dealer or wholesaler shall be allowed to make sales of beer in kegs of not less than seven and three-quarters (7 3/4) gallons to a consumer at his licensed premises. Licensed brewers may sell at retail only as provided in section 23-1003(d) and (e), Idaho Code. [1935, ch. 132, § 3-d, as added by 1943, ch. 167, § 2, p. 349; am. 1965, ch. 292, § 1, p. 778; am. 1982, ch. 307, § 1, p. 772; am. 1987, ch. 22, § 2, p. 29; am. 1991, ch. 279, § 1, p. 721.]

JUDICIAL DECISIONS

County Ordinance Prohibiting Sale in Kegs.

A retailer, who was prohibited from continuing to sell beer in kegs as a result of the passage of a county ordinance, was a proper

party to bring a declaratory judgment action challenging the validity of a section of the ordinance that prohibited the sale of beer in kegs within the county. *Hobbs v. Abrams*, 104 Idaho 205, 657 P.2d 1073 (1983).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 192 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 60, 61, 73, 74, 143 et seq.

23-1007A. Beer sold or donated for benevolent, charitable or public purposes — Permit required. — (1) Notwithstanding the provisions of section 23-1007, Idaho Code, to the contrary, nothing shall prevent any licensed dealer, wholesaler or retailer from selling or donating unbroken packages of beer or kegs of beer to a person which has not been issued any license for the sale of alcoholic beverages in this state, for benevolent, charitable or public purposes if a permit has been issued to the person or nonprofit entity as provided in subsection (2) of this section.

(2) Upon application to the director of the Idaho state police, the director may issue a permit authorizing the sale or dispensing of beer by a person if the director is satisfied that the proceeds, after deducting reasonable expenses incurred, will be donated for a benevolent, charitable or public purpose. The director shall prescribe the form of the application which may require:

- (a) Disclosure of names of sponsors;
- (b) Quantities and types of beer products to be used at the event;
- (c) Names of the dealer or wholesaler from whom the beer is to be received;
- (d) The retailer, if any, designated by such person or nonprofit entity to receive, store or dispense beer on behalf of the permittee;
- (e) Dates and hours during which the permit is to be effective, not to exceed three (3) consecutive days;
- (f) That the applicant submit a report to the director subsequent to the benevolent, charitable or public purpose event showing the disposition of funds from the event; and

(g) Such other information directly related to the event and the applicant that the director may require.

The director shall collect a twenty dollar (\$20.00) fee for each permit issued.

(3) Should the director determine that an applicant, permittee or its representative is violating or has in the past violated any law pertaining to the dispensing or sale of beer by a licensed retailer relating to hours of sale, relating to restrictions concerning age provided in section 23-1013, Idaho Code, or has failed in the past to submit such information as may have been requested by the director, such permit may be summarily suspended by the director prior to hearing, or may be denied or cancelled pending a hearing.

(4) A licensed retailer may, on behalf of the permittee, receive or store beer to be used at the event and may dispense such beer to attendees of the benevolent, charitable or public purpose event for which the permit was issued. [I.C., § 23-1007A, as added by 1991, ch. 279, § 2, p. 721; am. 2000, ch. 469, § 67, p. 1450.]

23-1008. Tax — Distribution — Rules — Reports. — (1) A tax of four dollars and sixty-five cents (\$4.65) per barrel of thirty-one (31) gallons, and a like rate for any other quantity or fraction thereof, is hereby levied and imposed upon each and every barrel of beer sold for use within the state of Idaho.

Any wholesaler who shall sell beer, upon which the tax herein imposed has not been paid and any person who shall purchase, receive, transport, store or sell any beer upon which the tax herein imposed has not been paid, shall be guilty of a misdemeanor, and any beer so purchased, received, transported, stored or possessed or sold shall be subject to seizure by the commission, any inspector or investigator of the commission, or by any sheriff, constable or other police officer, and same may be removed and kept for evidence. Upon conviction of any person for violation of this section, the said beer, and all barrels, kegs, cases, cartons and cans containing the same shall be forfeited to the state of Idaho, and, in addition, the person so convicted shall be subject to the other penalties in this act prescribed.

Beer and all barrels, kegs, cases, cartons or cans so forfeited to the state of Idaho shall be sold by the commission at public auction to any brewer, wholesaler or retailer, licensed under the provisions of this act, making the highest bid. Such sale shall be held at such place and time as may be designated by the commission after reasonable notice thereof given in such manner and for such time as the commission may by rule prescribe. From the purchase price received upon such sale, the commission shall first deduct an amount sufficient to pay the tax due on such beer, and to pay all costs incurred in connection with such sale. The commission shall deposit the balance remaining with the state treasurer, who shall place the same in the general account of the state of Idaho, and it shall become a part thereof.

(2) The revenues received from the taxes, interest, penalties, or deficiency payments imposed by this section shall be distributed as follows:

(a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by law to be paid by the tax commission shall be paid through the state refund account and those moneys are continuously appropriated.

(b) The balance remaining after distributing the amount in paragraph (a) of this subsection shall be distributed as follows:

(i) Twenty percent (20%) shall be distributed to the substance abuse treatment fund which is created in section 23-408, Idaho Code;

(ii) Thirty-three percent (33%) shall be distributed to the permanent building account; and

(iii) The remainder shall be distributed to the general account.

(3) The commission is empowered, and it shall be the commission's duty to prescribe rules:

(a) For reports by carriers for hire and also all other carriers owned and/or employed, directly or indirectly, by out of state brewers, dealers or other persons, of all deliveries of beer in and into the state of Idaho, stating especially the origin and destination of the beer, the quantity thereof, and also the names and addresses, respectively of the consignors and consignees.

(b) For reports by out of state brewers and manufacturers of beer, of all shipments by them of beer into the state of Idaho, stating especially the matters mentioned in paragraph (a) of this subsection. [1935, ch. 132, § 4, p. 312; am. 1949, ch. 192, § 1, p. 462; am. 1949, ch. 281, § 1, p. 575; am. 1961, ch. 43, § 3, p. 66; am. 1980, ch. 239, § 1, p. 554; am. 1980, ch. 391, § 1, p. 993; am. 1986, ch. 73, § 3, p. 201; am. 1987, ch. 260, § 2, p. 545; am. 2007, ch. 141, § 5, p. 407.]

STATUTORY NOTES

Cross References. — Alternative method of payment of tax, §§ 23-1047 to 23-1056.

Permanent building fund, § 57-1101 et seq.

State refund account, § 63-3067.

State tax commission, § 63-101.

Amendments. — The 2007 amendment, by ch. 141, in the second sentence of the last paragraph in subsection (1), substituted "rule" for "regulation"; in subsection (2)(b)(i), substituted "substance abuse treatment fund

which is created in section 23-408, Idaho Code" for "alcoholism treatment account"; and in the introductory paragraph of subsection (3), deleted "and regulations" from the end.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-1002.

Effective Dates. — Section 11 of S.L. 1961, ch. 43 provided the act should become effective on and after July 1, 1961.

23-1009. Retailers' local licenses. — No retailer shall sell beer within this state, until he or it shall be licensed therefor by a municipality, if the business is to be conducted therein, and by the county wherein said business is to be conducted, and by the director. Applications for retailer's licenses shall be made under oath first to the director of the Idaho state police, and if the license be issued, to the county and then to the municipality, upon forms to be supplied by each, which forms shall require that the applicant show that the applicant possesses all of the qualifications and none of the disqualifications of a retailer licensee under this act, and, as to the municipal license, under any ordinance thereof. Each application shall be accompanied with the required license fee. If the applications conform hereto the director, county and municipality respectively, shall each issue a retailer's license to the applicant, subject to the restrictions and upon the conditions in this act specified, and, as to the municipal license, in the ordinance aforesaid. Said licenses shall at all times be prominently displayed in the place of business of the licensee, and

shall be issued only for the particular premises described therein, but the municipality, county and director may permit a transfer to other particularly described premises. No license transferred by process of law or otherwise shall authorize the transferee, including any executor, administrator or trustee in bankruptcy of the estate of the licensee, to retail beer thereunder until the transferee shall have filed under oath applications therefor containing substantially the same information required of an applicant for a license, and if the transferee possesses the qualifications and none of the disqualifications for a license as herein provided, the director, county and municipality shall approve such transfer and issue a license so to show. The transferee shall accompany the state application for transfer with, and shall pay, the fee as set out in section 23-1005A, Idaho Code. Such transferee shall accompany each such county and municipality application for transfer with, and shall pay, the sum of five dollars (\$5.00). [1935, ch. 132, § 5, as added by 1943, ch. 167, § 4, p. 349; am. 1974, ch. 27, § 44, p. 811; am. 1991, ch. 137, § 5, p. 320; am. 2000, ch. 469, § 68, p. 1450.]

STATUTORY NOTES

Cross References. — County and municipal licenses, see also §§ 23-1015 to 23-1017.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-1002.

JUDICIAL DECISIONS

ANALYSIS

Restrictions.
Writ of mandate.

Restrictions.

Restriction of licenses for sale of beer in residential district of town by county commissioners to two did not constitute a prohibition of sale of beer, but constituted a reasonable restriction, which did not conflict with statutory law on sale of beer. *Gartland v. Talbott*, 72 Idaho 125, 237 P.2d 1067 (1951).

Restriction on sale of liquor by license is a proper exercise of police power by county, since no one has an inherent constitutional right to license for sale of liquor. *Gartland v. Talbott*, 72 Idaho 125, 237 P.2d 1067 (1951).

A county may not prohibit sale of liquor by license, if state law provides for sale of liquor by license, but the county may prescribe certain restrictions on sale of liquor, if those restrictions do not conflict with state act regulating sale of liquor by license. *Gartland v. Talbott*, 72 Idaho 125, 237 P.2d 1067 (1951).

Unlike the rather broad "local option" afforded local government in the case of liquor,

the right to sell beer may not be denied by local government arbitrarily, and, in fact, local government may only place "reasonable" restrictions on the sale of beer. *Mickelsen v. City of Rexburg*, 101 Idaho 305, 612 P.2d 542 (1980).

Writ of Mandate.

Where the record indicated that a landowner possessed all the qualifications, and none of the disqualifications, set by statute and ordinance as prerequisites for the issuance of a license to operate a beer tavern, the city council had no discretion to deny him a license; its duty to issue the license was merely ministerial, and the district court therefore erred in not issuing its writ of mandate to compel the city council to perform this duty. *Mickelsen v. City of Rexburg*, 101 Idaho 305, 612 P.2d 542 (1980).

Cited in: *Barth v. De Coursey*, 69 Idaho 469, 207 P.2d 1165 (1949).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 91.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 52, 66, 67, 68, 74.

23-1010. License to sell beer at retail — Application procedure and form — Showing of eligibility for license and disqualifications.

— (1) Every person who shall apply for a state license to sell beer at retail shall tender the license fee to, and file written application for license with, the director. The application shall be on a form prescribed by the director which shall require such information concerning the applicant, the premises for which license is sought and the business to be conducted thereon by the applicant as the director may deem necessary or advisable, and which shall enable the director to determine that the applicant is eligible and has none of the disqualifications for license, as provided for in this section. If the applicant is applying for a license solely for a theater that is presenting live performances as those terms are defined in section 23-1001, Idaho Code, the application shall so state. Such information shall include the following:

(a) The name and place of residence of the applicant and length of his residence within the state of Idaho, and if the applicant is a partnership, the names, places of residence and lengths of residence within the state of Idaho of each partner, and, if the applicant is a corporation or association, the date and place of incorporation or organization, the location of its principal place of business in Idaho and the names and places of residence of its officers, directors or members of its governing board, and of the person who manages or will manage the business of selling beer at retail;

(b) The particular place for which the license is desired, designating the same by a street and number, if practicable, or by such other apt description as definitely locates such place, and the name of the owner of the premises for which license is sought;

(2) The application shall affirmatively show:

(a) That the applicant is the bona fide owner of the business which will be engaged in the sale of beer at retail and with respect to which license is sought;

(b) That the condition of the place or building wherein it is proposed to sell beer at retail conforms to all laws and rules of the state of Idaho and to the ordinances of the county and municipality applicable thereto relating to public health and safety and to the zoning ordinances of the municipality applicable thereto;

(c) That there is no stamp or permit outstanding and in force which has been issued to any person by the United States government for the premises for which license to sell beer at retail is sought which stamp or permit denotes payment of any special tax imposed by the United States government on a retail dealer in liquor or wines, unless said premises are premises for which a retail license for sale of liquor by the drink, issued under the provisions of chapter 9, title 23, Idaho Code, is in force and effect;

(d) That the individual applicant, or each partner of a partnership applicant, or a corporation applicant or an association applicant is qualified to do business within the state of Idaho;

(e) That the applicant, if an individual, is not less than nineteen (19) years of age;

(f) That within three (3) years immediately preceding the date of filing the application the applicant has not been convicted of the violation of any

law of the state of Idaho, any other state, or of the United States, regulating, governing or prohibiting the sale, manufacture, transportation or possession of alcoholic beverages or intoxicating liquors, or, within said time, suffered the forfeiture of a bond for failure to appear in answer to charges of any such violation;

(g) That within five (5) years immediately preceding the date of filing the application the applicant has not been convicted of any felony or paid any fine or completed any sentence of confinement therefor within said time;

(h) That within three (3) years next preceding the date of filing said application the applicant has not had any license provided for herein, or any license or permit issued to the applicant pursuant to the law of this state, or any other state, or of the United States, to sell, manufacture, transport or possess alcoholic beverages or intoxicating liquors, revoked.

(3) To determine qualification for a license, the director shall also cause an investigation which shall include a fingerprint-based criminal history check of the Idaho central criminal history database and the federal bureau of investigation criminal history database. Each person listed as an applicant on an initial application shall submit a full set of fingerprints and the fee to cover the cost of the criminal history background check for such person with the application.

(4) The affirmative showing required with respect to an applicant under paragraphs (e), (f), (g) and (h) of subsection (2) of this section shall also be required to be made with respect to each partner of a partnership applicant and to each incumbent officer, director or member of the governing board of a corporation or association applicant.

(5) The application must be subscribed and sworn to by the individual applicant, or by a partner of a partnership applicant, or by an officer or manager of a corporation or association applicant, before a notary public or other person authorized by law to administer oaths.

(6) If an applicant shall be unable to make any affirmative showing required in this section or if an application shall contain a false material statement, knowingly made, the same shall constitute a disqualification for license and license shall be refused. If license is received on any application containing a false material statement, knowingly made, such license shall be revoked. If at any time during the period for which license is issued a licensee becomes unable to make the affirmative showings required by this section, license shall be revoked, or, if disqualification can be removed, the license shall be suspended until the same shall be removed. The procedure to be followed upon refusal, revocation or suspension of license as herein provided for shall be in accordance with the procedure set forth in this act.

(7) All licenses shall expire at 1:00 o'clock a.m. on the first day of the renewal month which shall be determined by the director by administrative rule and shall be subject to annual renewal upon proper application. The director will determine the renewal month by county based on the number of current licenses within each county, distributing renewals throughout the licensing year. The director may adjust the renewal month to accommodate population increases. Each licensee will be issued a temporary license to operate until their renewal month has been determined. Thereafter, renew-

als will occur annually on their renewal month. Renewal applications for licenses accompanied by the required fee must be filed with the director on or before the first day of the designated renewal month. Any licensee holding a valid license who fails to file an application for renewal of the current license on or before the first day of the designated renewal month shall have a grace period of an additional thirty-one (31) days in which to file an application for renewal of the license. The licensee shall not be permitted to sell beer at retail during the thirty-one (31) day extended time period unless and until the license is renewed. [I.C., § 23-1010, as added by 1961, ch. 299, § 2, p. 543; am. 1972, ch. 332, § 4, p. 834; am. 1974, ch. 27, § 45, p. 811; am. 1976, ch. 156, § 1, p. 555; am. 1978, ch. 304, § 1, p. 762; am. 1981, ch. 52, § 1, p. 78; am. 1983, ch. 159, § 1, p. 458; am. 1992, ch. 315, § 3, p. 937; am. 1994, ch. 14, § 6, p. 20; am 2001, ch. 30, § 2, p. 43; am. 2001, ch. 284, § 3, p. 1014; am. 2003, ch. 111, § 4, p. 348.]

STATUTORY NOTES

Prior Laws. — Former § 23-1010, which comprised S.L. 1935, ch. 132, § 5a, as added by 1943, ch. 167, § 4, p. 349; am. 1945, ch. 160, § 1, p. 239; am. 1947, ch. 253, § 1, p. 696; am. 1957, ch. 124, § 2, p. 205, was repealed by S.L. 1961, ch. 299, § 1.

Amendments. — This section was amended by two 2001 acts which appear to be compatible and have been compiled together.

The 2001 amendment, by ch. 30, substituted “rules” for “regulations” in subsection (2)(b); substituted “by the drink” for “by-the-

drink” in subsection (2)(c); inserted “paragraphs” preceding “(e), (f), (g)” in subsection (3) and rewrote subsection (6).

The 2001 amendment, by ch. 284, substituted “rules” for “regulations” in subsection (2)(b); substituted “by the drink” for “by-the-drink” in subsection (2)(c); added current subsection (3) and redesignated former subsections (3) through (6) as subsections (4) through (7).

Compiler’s Notes. — For words “this act”, see Compiler’s Notes, § 23-1002.

JUDICIAL DECISIONS

Nonresidents.

Buyer of liquor place was not entitled to cancellation of contract of sale on the ground that seller had represented that buyer could secure a liquor license even though buyer knew buyer could not as buyer was a nonres-

ident. *Graves v. Cupic*, 75 Idaho 451, 272 P.2d 1020 (1954).

Cited in: *Gartland v. Talbott*, 72 Idaho 125, 237 P.2d 1067 (1951).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 87 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 146 et seq.

23-1010A. Prohibited acts — Misdemeanors — Revocation. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — This section, which comprised I.C., § 23-1010A, as added by 1983,

ch. 159, § 2, p. 458, was repealed by S.L. 1999, ch. 59, § 9, p. 151, effective July 1, 1999.

23-1011. Issuance of licenses. — Notwithstanding any other provision of chapter 10, title 23, Idaho Code, all applications for retail sale of beer licenses, renewals, or transfers thereof, shall be first presented to the director

of the Idaho state police for approval and issuance of the state license required by state law. If the license, renewal or transfer thereof is approved by the director, then such license, renewal or transfer thereof may be issued by the city or county, or both, as the case may be. Approval of such license, renewal or transfer thereof may be by endorsement upon the state license or by the issuance of an additional license, at the option of the city or county. [I.C., § 23-1011, as added by 1976, ch. 165, § 1, p. 595; am. 1983, ch. 50, § 1, p. 120; am. 1991, ch. 137, § 6, p. 320; am. 2000, ch. 469, § 69, p. 1450.]

STATUTORY NOTES

Prior Laws. — Former § 23-1011, which comprised S.L. 1935, ch. 132, § 5-b, as added by 1943, ch. 167, § 4, p. 349, was repealed by S.L. 1961, ch. 299, § 6.

Compiler's Notes. — S.L. 1976, ch. 165, § 1, and S.L. 1976, ch. 236, § 1, both added a

new § 23-1011. The section added by chapter 165 is compiled as § 23-1011, and the section added by chapter 236 was compiled as § 23-1011a. However, the amendment of § 23-1011a by § 2 of S.L. 1963, ch. 50 redesignated the section as § 23-1011A.

23-1011A. Officers may examine premises. — The director or his duly authorized representative, the sheriff of any county, or any other police officer, shall have the right at any time to make an examination of the premises of any licensee as to whether the laws of the state of Idaho, the rules and regulations of the director, and the ordinances of any city or county are being complied with. [I.C., § 23-1011, as added by 1976, ch. 236, § 1, p. 829; am. and redesign. 1983, ch. 50, § 2, p. 120.]

STATUTORY NOTES

Compiler's Notes. — This section was enacted as § 23-1011 by S.L. 1976, ch. 236, § 1, p. 829 but was designated as § 23-1011a since a § 23-1011 was also enacted by S.L.

1976, ch. 165, § 1, p. 595. The amendment by § 2 of S.L. 1983, ch. 50 redesignated the section as § 23-1011A.

23-1011B. Bars or taverns not allowed near churches or schools — Exceptions. — No license shall be issued for any place where beer is sold or dispensed to be consumed on the premises, whether conducted for pleasure or profit, that is within three hundred (300) feet of any public school, church, or any other place of worship measured in a straight line to the nearest entrance to the licensed premises, except with the approval of the governing body of the municipality; provided that this limitation shall not apply to any duly licensed premises that at the time of licensing did not come within the restricted area but subsequent to licensing came therein. [I.C., § 23-1011B, as added by 1978, ch. 349, § 1, p. 913.]

23-1012. Hours of sale. — (1) It shall be unlawful and a misdemeanor for any person in any place licensed to sell beer or where beer is sold or dispensed to be consumed on the premises, whether conducted for pleasure or profit, to sell, dispense or give away beer between the hours of one (1) o'clock A.M. and six (6) o'clock A.M.

(2) Any patron present on the licensed premises after the sale of beer has stopped as provided in subsections (1) and (4) herein shall have a reasonable

time, not to exceed thirty (30) minutes, to consume any beverage already served.

(3) Any person who consumes or intentionally permits the consumption of any alcoholic beverage upon the licensed premises after the time provided for in subsection (2) shall be guilty of a misdemeanor.

(4) A county or city may, however, extend, until two (2) o'clock A.M., the hours of the sale of beer. [1943, ch. 167, § 5, p. 349; am. 1978, ch. 39, § 1, p. 68; am. 1987, ch. 110, § 2, p. 222; am. 1987, ch. 351, § 1, p. 780; am. 2003, ch. 284, § 2, p. 769.]

STATUTORY NOTES

Cross References. — Days of sale of liquor by state stores, § 23-307.

Hours of sale of liquor by drink, § 23-927.

Penalty for misdemeanor not otherwise provided, § 18-113.

Sale of liquor on Sundays prohibited, § 23-307.

Amendments. — This section was amended by two 1987 acts which appear to be compatible and have been compiled together.

The 1987 amendment, by ch. 110, in subsection (2) substituted "subsections" for "subsection" following "as provided in", deleted

"above" following "in subsections (1)", added "and (4) herein" preceding "shall have a" and added a subsection (4) identical to that added by chapter 351.

The 1987 amendment, by ch. 351, in subsection (1) substituted "six (6)" for "seven (7)" following "o'clock A.M. and" and added a subsection (4) identical to that added by chapter 110.

Effective Dates. — Section 2 of S.L. 1978, ch. 39 declared an emergency. Approved March 3, 1978.

JUDICIAL DECISIONS

ANALYSIS

City ordinance.

County regulations.

City Ordinance.

A city ordinance banning all beer sales on Sunday was valid and did not conflict with this section; the manifest intention of the 1978 amendment to this section was to permit a purchaser of beer for on-premises consumption a reasonable amount of time to finish his beer after closing and the amendment had nothing to do with the right of cities to regulate the Sunday sale of packaged beer for off-premises consumption. *Russell v. Teton City*, 102 Idaho 348, 630 P.2d 140 (1981).

County Regulations.

County regulation providing that no beer shall be sold from Saturday midnight to 7:00 A.M. of following Monday, and on certain designated holidays, which regulation extended hours when beer should not be sold as provided by statute, is not in conflict with the general law, and is a valid regulation in territory embraced in county, exclusive of municipalities, but regulation is of no effect within limits of incorporated municipalities located in the county. *Clyde Hess Distrib. Co. v. Bonneville County*, 69 Idaho 505, 210 P.2d 798 (1949).

Legislature by providing that sale of beer was prohibited between the hours of 1:00 A.M.

and 7:00 A.M. did not intend to occupy whole field of hours for sale of beer, hence regulation by county as to hours of sale is not necessarily inconsistent with the general law. *Clyde Hess Distrib. Co. v. Bonneville County*, 69 Idaho 505, 210 P.2d 798 (1949).

Order of county commissioner prohibiting sale of beer from Saturday midnight to 7:00 A.M. on following Monday, and also prohibiting sale of beer on certain designated holidays, is not void on the ground that it is inconsistent with the general law insofar as it extended hours during which beer may not be sold. *Clyde Hess Distrib. Co. v. Bonneville County*, 69 Idaho 505, 210 P.2d 798 (1949).

Restrictions imposed by the county on the sale of beer which merely add limitations to statutory provisions, and which are not unreasonable or discriminatory, and reasonably tend to promote some object within the police power of county, and are not so restrictive as to operate prohibitively, will be upheld as being within the police power and not in conflict with the general law. *Taggart v. Latah County*, 78 Idaho 99, 298 P.2d 979 (1956).

County ordinance, which prohibited licensed beer establishments located in unincorporated territory in the county from selling

beer between the hours of midnight and 7:00 A.M. on weekdays was valid, though this section prohibited sales on weekdays between 1:00 A.M. and 7:00 A.M., since the ordinance was reasonable and did not arbitrarily interfere with the operation of the establishments

involved so as to be prohibitive. *Taggart v. Latah County*, 78 Idaho 99, 298 P.2d 979 (1956).

Cited in: *Blue Note, Inc. v. Hopper*, 85 Idaho 152, 377 P.2d 373 (1962).

RESEARCH REFERENCES

Am. Jur. — 45 Am. Jur. 2d, Intoxicating Liquors, § 226 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 308.

23-1013. Restrictions concerning age. — Any person who is nineteen (19) years of age or older may sell, serve, possess or dispense beer in the course of his employment, otherwise it shall be unlawful for any person to sell, serve or dispense beer to or by any person under twenty-one (21) years of age, proof of which, shall be a validly issued state, district, territorial, possession, provincial, national or other equivalent government driver's license, identification card or military identification card bearing a photograph and date of birth, or a valid passport. [I.C., § 23-1013, as added by 1961, ch. 299, § 4, p. 543; am. 1967, ch. 19, § 1, p. 37; am. 1972, ch. 332, § 5, p. 834; am. 1975, ch. 179, § 2, p. 485; am. 1987, ch. 212, § 10, p. 448; am. 1991, ch. 269, § 2, p. 660.]

STATUTORY NOTES

Prior Laws. — Former § 23-1013, which comprised S.L. 1935, ch. 132, § 6; am. and reen. 1947, ch. 192, § 5, p. 462, prescribing unlawful practices in the sale of beer, was repealed by S.L. 1961, ch. 299, § 3. For

present provisions see §§ 23-1027 to 23-1036.

Effective Dates. — Section 2 of S.L. 1967, ch. 19 provided that this act shall be effective from and after July 1, 1967.

JUDICIAL DECISIONS

ANALYSIS

Proof of age.
Sale by employee.
Sale to minor.

Proof of Age.

Where a nonresident, questioned as to her age, produced a false Canadian birth certificate which was regular on its face, licensee complied with statute which requires that nonresidents who desire to purchase beer execute a certificate that they are twenty (now twenty-one) or more years of age and to exhibit acceptable proof of age and identity, and license was not subject to suspension because of sale of beer by licensee's employee to person under the age of twenty (now twenty-one) years, since commissioner's (now director's) regulation 7-B providing that an official identification card issued by the commissioner is the exclusive method of proof of age does not apply to nonresidents. *Bojack's Inc. v. Department of Law Enforcement*, 91 Idaho 189, 418 P.2d 552 (1966).

Sale by Employee.

Suspension of appellant's license because appellant had sold, served or dispensed or caused to be sold, served or dispensed beer to a person or persons under the age of 20 (now 21) years was upheld by the supreme court where beer had been sold by an employee of the person so licensed. *State v. Meyers*, 85 Idaho 129, 376 P.2d 710 (1962).

Sale to Minor.

Section one is not violated unless there is proof of a transaction constituting a sale to a minor. *State v. Lawler*, 74 Idaho 114, 258 P.2d 360 (1953).

Where evidence failed to show sale to designated minor or sale to a minor on designated date, a conviction for selling to a minor was not justified. *State v. Lawler*, 74 Idaho 114, 258 P.2d 360 (1953).

Cited in: LaVoie v. Commissioner of Law (1964); State v. Murphy, 94 Idaho 849, 499 Enforcement, 87 Idaho 536, 394 P.2d 300 P.2d 548 (1972).

23-1014. License fees. — Every person licensed under the provisions of this chapter shall pay to the state of Idaho an annual license fee according to the following schedule:

	Fee
(1) Brewer annually producing	
(a) Under 10,000 gallons	\$ 50.00
(b) 10,000 to 100,000 gallons	\$100.00
(c) 100,000 to 930,000 gallons	\$200.00
(d) 930,000 gallons or more	\$500.00

A like amount shall be paid for each separate brewery operated by the licensee.

(2) Wholesaler	
(a) For each separate warehouse used for the purpose of wholesaling or dispensing beer	\$300.00
(3) Dealer	\$100.00
(4) Retailer	
(a) For each store from which beer is retailed	\$ 50.00
(b) For each store from which a licensed retailer sells keg beer for consumption off premises	\$ 20.00

Nothing in this chapter shall be so construed to prohibit municipalities or counties from licensing and regulating places of business where beer is sold to the consumer. [I.C., § 23-1014, as added by 1987, ch. 91, § 2, p. 172; am. 1994, ch. 13, § 1, p. 20.]

STATUTORY NOTES

Cross References. — License fees for 1947, ch. 192, § 6, p. 462; am. 1981, ch. 91, other dealers, §§ 23-1004, 23-1016. § 1, p. 129; am. 1984, ch. 133, § 1, p. 319, was repealed by S.L. 1987, ch. 91, § 1.

Prior Laws. — Former § 23-1014, which comprised 1935, ch. 132, § 7, p. 312; reen.

23-1015. County retailers' license, when required, procedure. —

- (1) It shall be unlawful for any retailer to sell beer without first procuring a retailer's license from the county, said license to be issued on such conditions and terms as may be required by the board of county commissioners in the county wherein such place of sale of beer is located; provided, that no county shall exact a license fee from any dealer except as follows:
- (a) Where such retailer sells only bottled or canned beer: none of which is consumed on the premises where sold, the license fee shall be equal to twenty-five per cent (25%) of the license fee exacted under subsection (1)(b) of this section relating to draught beer and bottled or canned beer, or draught beer only; and where such bottled or canned beer is consumed on the premises where sold the license fee shall be seventy-five per cent (75%) of the fee exacted under said subsection (b) hereof.
- (b) Where such retailer sells draught beer and bottled or canned beer, or draught beer only, not in excess of one hundred dollars (\$100), a year.
- (2) The board of county commissioners shall establish a procedure for processing applications for licenses, transfers or renewals thereof in a

timely manner. Each application for a license, transfer or renewal thereof, required by the provisions of this section, shall be submitted to the board of county commissioners for a decision. The board of county commissioners shall have a reasonable time to examine the application before a decision is made on granting or denying the license, or the transfer or renewal thereof. Each board of county commissioners shall establish, by ordinance, a time period within which a decision must be made following submission of an application. Whenever a board of county commissioners denies an application, the board shall specify in writing:

- (a) The statutes, ordinances and standards used in evaluating the application;
- (b) The reasons for denial; and
- (c) The actions, if any, that the applicant could take to obtain the license, transfer or renewal thereof.

(3) An applicant denied a license, transfer or renewal thereof or aggrieved by a decision of the board of county commissioners pursuant to this section may, within twenty-eight (28) days, after all remedies have been exhausted under county ordinances or procedures, seek judicial review under the procedures provided in chapter 52, title 67, Idaho Code, and for such purposes a county shall be construed to mean an agency.

(4) In all cases where the board of county commissioners is considering applications for licenses, transfers or renewals thereof, a transcribable verbatim record of the proceedings shall be made. If the application for a license, transfer or renewal is denied, a transcribable, verbatim record of the proceedings shall be kept for a period of not less than six (6) months after a final decision on the matter. Upon written request and within the time period provided for retention of the record, any person may have the record transcribed at his expense. The board of county commissioners shall also provide for the keeping of minutes of the proceedings. Minutes shall be retained indefinitely or as otherwise provided by law. [1935, ch. 132, § 7-A, as added by 1947, ch. 192, § 7, p. 462; am. 1983, ch. 50, § 3, p. 120; am. 1993, ch. 216, § 6, p. 587.]

STATUTORY NOTES

Cross References. — Applications for county or municipal licenses, § 23-1009.
Qualifications of licensees, § 23-1010.

JUDICIAL DECISIONS

ANALYSIS

Arbitrary acts.
Authority conferred by statute.
Regulation of hours of sale.
Right of review.

Arbitrary Acts.

A county may not arbitrarily prohibit sale of beer to applicant for license to sell beer, as it is duty of the county to grant a license to a duly qualified applicant upon such terms and

conditions as the county may require. *Barth v. De Coursey*, 69 Idaho 469, 207 P.2d 1165 (1949).

Resolution of Canyon County that it will not issue a license to sell beer outside corpo-

rate limits of cities and villages in the county amounts to prohibition of licenses for the balance of the county and is inconsistent with, and contrary to, the state law legalizing sale of beer. *Barth v. De Coursey*, 69 Idaho 469, 207 P.2d 1165 (1949).

Where county commissioners refused to grant a qualified applicant a license to sell beer solely on the ground that resolution prohibited sale of beer outside corporate limits of cities and towns, the resolution was unreasonable, prohibitory, and contrary to the state law, so court will issue writ of mandate to compel the commission to issue the license. *Barth v. De Coursey*, 69 Idaho 469, 207 P.2d 1165 (1949).

Authority Conferred by Statute.

Power granted by state act to county for licensing sale of beer, whereby county could impose terms and conditions for granting of licenses, must be interpreted in the light of the mandatory provision that the county shall issue licenses. *Barth v. De Coursey*, 69 Idaho 469, 207 P.2d 1165 (1949).

Where statutes authorize counties and municipalities to regulate place of business where beer is sold, authorize counties to issue licenses upon such terms as it may require, provide for issuance of municipal licenses to retailers after they have first obtained a county license, and provide that both county and municipality may levy and collect license fees, the legislature by virtue of such statutes has not gone beyond its recognized power and has not attempted to empower a county to make police regulations enforceable within a municipality. *Clyde Hess Distrib. Co. v. Bonneville County*, 69 Idaho 505, 210 P.2d 798 (1949).

Regulation of Hours of Sale.

County regulation providing that no beer shall be sold from Saturday midnight to 7:00 A.M. of following Monday, and on certain designated holidays, which regulation extended hours when beer should not be sold as provided by statute, is not in conflict with the general law and is a valid regulation in territory embraced in county, exclusive of municipalities; but regulation is of no effect within limits of incorporated municipalities located in the county. *Clyde Hess Distrib. Co. v. Bonneville County*, 69 Idaho 505, 210 P.2d 798 (1949).

Legislature by providing that sale of beer was prohibited between the hours of 1:00 A.M. and 7:00 A.M. did not intend to occupy whole field of hours for sale of beer; hence, regulation by county as to hours of sale is not necessarily inconsistent with the general law. *Clyde Hess Distrib. Co. v. Bonneville County*, 69 Idaho 505, 210 P.2d 798 (1949).

Order of county commissioner, prohibiting sale of beer from Saturday midnight to 7:00 A.M. on following Monday and also prohibiting sale of beer on certain designated holidays, is not void on the ground that it is inconsistent with the general law insofar as it extended hours during which beer may not be sold. *Clyde Hess Distrib. Co. v. Bonneville County*, 69 Idaho 505, 210 P.2d 798 (1949).

Right of Review.

The language of this section limited the right of review to an applicant and did not extend to all persons aggrieved by a decision of the county commissioners. *Fox v. Board of County Comm'rs*, 114 Idaho 940, 763 P.2d 313 (Ct. App. 1988).

Cited in: *Gartland v. Talbott*, 72 Idaho 125, 237 P.2d 1067 (1951).

23-1016. Municipal license also required — Procedure. — (1) It shall be competent and lawful for an incorporated municipality within the county wherein said county license to sell beer is granted by the county, by proper ordinance and regulation, to prohibit the sale of beer within the incorporated limits of such incorporated municipality until a retailer's license is first obtained from such incorporated municipality. Provided, however, that no incorporated municipality shall issue a license to any retailer until such retailer shall have first obtained a county license from the board of county commissioners, and that a revocation of the license granted by the board of county commissioners shall work a revocation of license granted by such incorporated municipality. Provided, further, that no municipality, whether operating under a special charter or otherwise, shall exact a license fee from any retailer except as follows:

- (a) Where such retailer sells only bottled or canned beer: none of which is consumed on the premises where sold, the license fee shall be equal to twenty-five per cent (25%) of the license fee exacted under subsection (1)(b) of this section.

(b) Where such retailer sells for consumption on the premises, draught beer and bottled or canned beer or draught beer only, not in excess of two hundred dollars (\$200) a year.

(2) The city council shall establish by ordinance a procedure for processing applications for licenses, transfers or renewals thereof in a timely manner. Each application for a license, transfer or renewal thereof, required by the provisions of this section, shall be submitted to the city council for a decision. The city council shall have a reasonable time to examine the application before a decision is made on granting or denying the license, or the transfer or renewal thereof. Each city council shall establish, by ordinance, a time period within which a decision must be made following submission of an application. Whenever a city council denies an application, the council shall specify in writing:

(a) The statutes, ordinances and standards used in evaluating the application;

(b) The reasons for denial; and

(c) The actions, if any, that the applicant could take to obtain the license, transfer or renewal thereof.

(3) Nothing in this section shall be construed as prohibiting the delegation of the processing of an application and the granting or denying thereof, as provided in subsection (2) of this section, to a municipality's city clerk. If the licensing power is delegated, an applicant denied a license, transfer, or renewal thereof may appeal the city clerk's decision to the city council, within the time and in the manner as the city council may provide by ordinance.

(4) An applicant denied a license, transfer or renewal thereof or aggrieved by a decision of the city council pursuant to this section may, within twenty-eight (28) days, after all remedies have been exhausted under city ordinances and procedures, seek judicial review under the procedures provided in chapter 52, title 67, Idaho Code, and for such purposes a city shall be construed to mean an agency.

(5) In all cases where the city council is considering an application for or hearing an appeal from a denial of a license, transfer or renewal thereof, a transcribable verbatim record of the proceedings shall be made. If the application for or appeal from a denial of a license, transfer or renewal is denied, a transcribable, verbatim record of the proceedings shall be kept for a period of not less than six (6) months after a final decision on the matter. For the purpose of this section, the date of final decision shall be the date upon which the written decision of the city council is transmitted. Upon written request and within the time period provided for retention of the record, any person may have the record transcribed at his expense. The city council shall also provide for the keeping of minutes of the proceedings. Minutes shall be retained indefinitely or as otherwise provided by law. [1935, ch. 132, § 7-B, as added by 1947, ch. 192, § 7, p. 462; am. 1981, ch. 237, § 1, p. 477; am. 1983, ch. 50, § 4, p. 120; am. 1987, ch. 12, § 1, p. 16; am. 1993, ch. 216, § 7, p. 587.]

JUDICIAL DECISIONS

Cited in: Clyde Hess Distrib. Co. v. Bonneville County, 69 Idaho 505, 210 P.2d 798 (1949).

23-1017. Intention of preceding section. — It is hereby declared to be the intention of section 23-1016 that both counties and incorporated municipalities may levy and collect a license [fee] for the retail sale of beer as herein provided, and the granting of power to license retailer of beer in an incorporated municipality shall not be held as in any way conflicting with the provisions of this act relating to the granting of retailer's license by the county. [1935, ch. 132, § 7-C, as added by 1947, ch. 192, § 7, p. 462.]

STATUTORY NOTES

Compiler's Notes. — The bracketed word "fee" was inserted by the compiler.

For words "this act", see Compiler's Notes, § 23-1002.

JUDICIAL DECISIONS

Cited in: Clyde Hess Distrib. Co. v. Bonneville County, 69 Idaho 505, 210 P.2d 798 (1949).

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 70, 72, 73, 74.

23-1018. Sale of keg beer — Penalties. — (1) Retail and wholesale licensees selling keg beer for consumption off licensed premises shall place an identification tag onto all kegs of beer at the time of sale and require the signing of a receipt therefor by the purchaser in order to allow kegs to be traced if the contents are used in violation of this act. The keg identification shall be in the form of a numbered label prescribed and supplied by the director of the Idaho state police, which identifies the seller and which is removable or obliterated when the keg is processed for refilling. The receipt shall be on a form prescribed and supplied by the director of the Idaho state police and shall include the name and address of the purchaser and such other information as may be required by the director of the Idaho state police.

(2) Any licensee selling keg beer for off-premises consumption who fails to require the signing of a receipt at the time of sale and fails to place a numbered identification label onto the keg shall be subject to having his license suspended as set forth in section 23-1038, Idaho Code.

(3) Possession of a keg containing beer which is not identified as required by subsection (1) of this section is a misdemeanor.

(4) Any purchaser of keg beer who knowingly provides false information on the receipt required by subsection (1) of this section shall be guilty of a misdemeanor.

(5) As used in this section, "keg" means any brewery-sealed, individual container of beer having a liquid capacity of seven and three-fourths (7 3/4) gallons or more. [I.C., § 23-1018, as added by 1981, ch. 76, § 1, p. 108; am. 1989, ch. 314, § 1, p. 810; am. 1990, ch. 428, § 1, p. 1184; am. 2000, ch. 469, § 70, p. 1450.]

STATUTORY NOTES

Cross References. — Punishment for misdemeanor when not otherwise provided, § 18-713.

Prior Laws. — Former § 23-1018, which comprised S.L. 1935, ch. 132, § 8, p. 312, am.

1939, ch. 246, § 4, p. 593, was repealed by S.L. 1961, ch. 299, § 5.

Compiler's Notes. — The words "this act" refer to S.L. 1981, ch. 76, which is compiled as this section.

23-1019. Review of refusal or revocation of license. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1935, ch. 132, § 9, p. 312; am.

1939, ch. 246, § 5, p. 593, was repealed by S.L. 1961, ch. 299, § 6.

23-1020. Penalty. — Any person who violates any of the provisions of this act shall be guilty of a misdemeanor. [1935, ch. 132, § 10, p. 312.]

STATUTORY NOTES

Cross References. — Penalty for misdemeanor when not otherwise provided, § 18-113.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-1002.

JUDICIAL DECISIONS

Cited in: State v. Murphy, 94 Idaho 849, 499 P.2d 548 (1972).

23-1021. Revenue received from beer tax. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1935, ch. 132, § 11, p. 312; am.

1939, ch. 173, § 10, p. 320, was repealed by S.L. 1986, ch. 73, § 1.

23-1022. Separability. — If any portion of this act shall be declared unconstitutional it shall not invalidate the other provisions thereof. [1935, ch. 132, § 13, p. 312.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-1002.

23-1023. Beer — Authorization to deliver. — The prohibition upon possession of beer by any person under twenty-one (21) years of age does not apply to possession by a person under the age of twenty-one (21) years

making a delivery of beer in pursuance of the order of his parent or in pursuance of his employment, or when such person under the age of twenty-one (21) years is in a private residence accompanied by his parent or guardian and with such parent's or guardian's consent. [I.C., § 23-1023, as added by 1953, ch. 72, § 1, p. 94; am. 1967, ch. 351, § 1, p. 995; am. 1972, ch. 332, § 6, p. 834; am. 1987, ch. 212, § 11, p. 448; am. 1997, ch. 68, § 1, p. 144; am. 1999, ch. 59, § 10, p. 151.]

JUDICIAL DECISIONS

ANALYSIS

Notice.

Proof of age.

Relation to § 23-949.

Notice.

Notice to appellant that on or about the 23rd day of November, 1961, he sold or dispensed beer to a person or persons under age of 20 (now 21) years failed to meet the minimum standards established by the legislature as to what the notice must contain since it merely recites the commissioner's (now director's) determination that appellant had violated this provision. *Nelson v. Hopper*, 86 Idaho 115, 383 P.2d 588 (1963).

Proof of Age.

Where a licensee, without requiring that an official identification card be shown, sold beer to a purchaser who was under 20 (now 21) years of age, such sale was unlawful, although licensee was shown a birth certificate and identification card which established the purchaser's age as 21, and were not false on their face. *LaVoie v. Commissioner of Law Enforcement*, 87 Idaho 536, 394 P.2d 300 (1964).

Relation to § 23-949.

In prosecutions under § 23-949, the state does not have to prove as part of its case in chief that the exceptions contained in this section do not apply; rather, the burden is on the defendant to put the exception in issue before the state is required to present evidence negating the exception. *State v. Maland*, 124 Idaho 537, 861 P.2d 107 (Ct. App. 1993).

Section 23-949 is a general statute dealing with illegal possession of a number of different beverages, while this section deals specifically with illegal possession of beer; therefore, the exceptions contained in this section must apply to all prosecutions for illegal possession of beer, even if the prosecution is brought under § 23-949. *State v. Maland*, 124 Idaho 537, 861 P.2d 107 (Ct. App. 1993).

Cited in: *State v. Murphy*, 94 Idaho 849, 499 P.2d 548 (1972).

23-1024. False representation as being twenty-one or more years of age a misdemeanor. — Any person under the age of twenty-one (21) years who shall by any means represent to any person licensed to sell beer at retail or wholesale, or to any agent or employee of such retail or wholesale licensee, that he or she is twenty-one (21) or more years of age for the purpose of entering licensed premises or inducing such retail or wholesale licensee, his agent or employee, to sell, serve or dispense beer to him or her shall be guilty of a misdemeanor.

Any person who shall by any means represent to any such retail or wholesale licensee, his agent or employee, that any other person is twenty-one (21) or more years of age, when in fact such other person is under the age of twenty-one (21) years, for the purpose of entering licensed premises or inducing such retail or wholesale licensee, his agent or employee, to sell, serve or dispense beer to such other person, shall be guilty of a misdemeanor. [I.C., § 23-1024, as added by 1953, ch. 72, § 1, p. 94; am. 1972, ch. 332, § 7, p. 834; am. 1987, ch. 212, § 12, p. 448; am. 1991, ch. 269, § 3, p. 660.]

STATUTORY NOTES

Cross References. — Punishment for misdemeanor when not otherwise provided, § 18-713.

23-1025, 23-1026. Certificate as to age — Execution in cases of doubt — Form — Posting of sign containing law regulating sales to minors. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised I.C., §§ 23-1025, 23-1026, as added by 1953, ch. 72, § 1, p. 94; am. 1972, ch. 332, § 8, p. 834; am. 1974, ch. 27, §§ 46, 47, p. 811; am. 1987, ch. 212, § 13, p. 448, were repealed by S.L. 1991, ch. 269, § 5.

23-1027. Certificate of approval required of manufacturer. — It shall be unlawful for any person licensed under the provisions of this act, to purchase, import, transport or cause to be transported into or within the state of Idaho any beer for resale therein, unless prior thereto a certificate of approval shall have been issued by the director to the manufacturer of such beer. The certificate of approval herein required shall be issued to a manufacturer of beer upon application therefor provided the manufacturer shall have first agreed in writing with the director as follows:

(a) to furnish to the director, on or before the 15th day of each month, a written report under oath on a form to be prescribed by the director showing the quantity of beer sold, delivered or shipped to each wholesaler or dealer of beer licensed in this state for resale in this state; and

(b) that such manufacturer and every person employed by it or acting as its agents (other than wholesalers and dealers licensed in this state) will faithfully comply with and observe all the provisions of the laws of the state of Idaho relating to beer and all rules and regulations adopted by the director pursuant to such laws.

If, after obtaining such certificate, any such manufacturer shall fail to submit such report, or, if it, or any such person employed by it or acting as its agent, shall violate the terms of such agreement, the director may determine to revoke or suspend such certificate by reason thereof. The procedure for giving notice of such determination and for proceedings to contest determination as provided for in sections 23-1037 through 23-1045, Idaho Code, shall govern insofar as they may be applicable. The district court of Ada County shall have jurisdiction of any such proceedings to contest the director's determination. [I.C., § 23-1027, as added by 1961, ch. 299, § 5, p. 543; am. 1974, ch. 27, § 48, p. 811.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

The words "this act" refer to S.L. 1961, ch. 299, which is codified as §§ 23-1010, 23-1013,

23-1027 to 23-1031, 23-1034 to 23-1037, and 23-1042 to 23-1046. Probably, the reference should be to "this chapter", being chapter 10, title 23, Idaho Code.

23-1028. Warehouse and records of wholesalers and dealers. — Each licensed wholesaler and dealer shall sell and distribute beer in this state only from stocks of beer which have been unloaded, stored and maintained in a warehouse or warehouses owned or used by such wholesaler or dealer within the state of Idaho in the conduct of his business as such. All records which a wholesaler or dealer is by law or rule required to maintain, shall be kept at his warehouse within the state of Idaho, or, if such wholesaler or dealer shall have more than one (1) warehouse, then in the warehouse of such wholesaler or dealer which he shall designate as his principal warehouse within the state. Nothing in this section shall be deemed to affect the existing rights of any person who, on and prior to January 1, 1996, was licensed as a wholesaler by the state of Idaho. [I.C., § 23-1028, as added by 1961, ch. 299, § 5, p. 543; am. 1996, ch. 329, § 1, p. 1122.]

23-1029. Posting of prices. — Each licensed wholesaler, brewer and dealer engaged in selling beer for resale within this state, shall file with the director a written schedule of prices to be charged by him for beer sold within this state for resale therein, which schedule of prices shall be uniform for the same class of buyers in the same trade area within this state, and shall set forth;

- (a) all brands and types of products offered for sale;
- (b) the delivered sale price thereof in the several trade areas of the state to the various classes of buyers; and
- (c) any allowance granted for returned containers.

Such schedule of prices so filed may be changed or modified from time to time by filing with the director a new schedule of prices, not less than ten (10) days prior to the last day of the filing calendar month, becoming effective on the first day of the succeeding calendar month.

Such schedule of prices so filed shall not be withdrawn within ten (10) days of its effective date. An amendment of the prior filing shall show the posting changes of the particular brand and product affected. The amendment shall be in the form of a statement to the director detailing the reasons for the amendment. The amendment submitted to the director shall be prima facie evidence of its correctness; and failure of the director to act upon denial of the amendment within ten (10) days shall constitute its adoption. Upon becoming effective the schedule shall remain in effect as follows:

- (i) an increase in prices, for a minimum period of thirty (30) days;
- (ii) a reduction in prices, for a minimum period of six (6) months. All price schedules, so filed, shall be subject to public inspection and shall not be considered confidential. Upon the filing of the original schedule of prices, and after the effective date of any schedule of prices amendatory thereto, all prices therein stated shall be strictly adhered to, and any departure or variation therefrom shall constitute the giving of aid or assistance prohibited by the provisions of section 23-1033, Idaho Code. [I.C., § 23-1029, as added by 1961, ch. 299, § 5, p. 543; am. 1969, ch. 276, § 1, p. 819; am. 1972, ch. 33, § 1, p. 51; am. 1974, ch. 27, § 49, p. 811; am. 1975, ch. 151, § 1, p. 383; am. 1979, ch. 136, § 1, p. 432.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Advertising plan.
Intent of law.

Advertising Plan.

Cash cap advertising plan whereby brewery redeemed caps from consumer was not a violation of provisions requiring beer to be sold at posted prices and to all buyers without discrimination under the same circumstances. *Bohemian Breweries v. Koehler*, 80 Idaho 438, 332 P.2d 875 (1958).

Intent of Law.

Intent of provision requiring posting of prices for beer and that the price be uniform in the same trade area is to prevent discrimination in the cost of beer to retailers. *Bohemian Breweries v. Koehler*, 80 Idaho 438, 332 P.2d 875 (1958).

23-1030. Size of containers. — No dealer or wholesaler shall purchase, receive or resell any beer except in the original container as prepared for the market by the brewer at the place of manufacture. [I.C., § 23-1030, as added by 1961, ch. 299, § 5, p. 543; am. 1974, ch. 27, § 50, p. 811; am. 1994, ch. 14, § 1, p. 20.]

23-1031. Extension of credit. — No sale or delivery of beer shall be made to any licensed retailer, except for cash paid at the time of or prior to delivery thereof, and in no event shall any brewer, wholesaler or dealer licensed in the state and engaged in the sale of beer for resale extend any credit on account of such beer to a licensed retailer, nor shall any licensed retailer accept or receive delivery of such beer except when payment therefor is made in cash at the time of or prior to delivery thereof. The acceptance of a first party check from a licensed retailer by a brewer, wholesaler or dealer licensed in the state and engaged in the sale of beer for resale, or the use of electronic funds transfer or debit card by a licensed retailer, shall not be deemed an extension or acceptance of credit hereunder. Any extension or acceptance of credit in violation hereof shall constitute the giving and receiving of aid or assistance to or by a licensed retailer prohibited by the provisions of section 23-1033, Idaho Code. [I.C., § 23-1031, as added by 1961, ch. 299, § 5, p. 543; am. 1965, ch. 176, § 1, p. 362; am. 1999, ch. 206, § 2, p. 553.]

23-1032. Employee permit. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 23-1032, as added by 1961, ch. 299, § 5, p. 543, regulating employee permits, was repealed by S.L. 1979, ch. 145, § 1.

23-1033. Financial interest in or aid to retailers prohibited — Certain aid permitted. — (1) Except as provided in sections 23-1003(d), and 23-1003(e), Idaho Code, it shall be unlawful for any brewer, dealer, wholesaler, or the holder of any certificate of approval, directly or indirectly, or through an affiliate, subsidiary, officer, director, agent or employee:

- (a) To have any financial interest in any licensed retailer's business, or to own or control any real property upon which a licensed retailer conducts his business, except such property as shall have been so owned or controlled continuously for more than one (1) year prior to July 1, 1975; or
 - (b) To aid or assist any licensed retailer by giving such retailer, or any employee thereof, any discounts, premiums or rebates in connection with any sale of beer; or
 - (c) To aid or assist any licensed retailer by furnishing, giving, renting, lending or selling any equipment, signs, supplies, services, or other thing of value to the retailer which may be used in conducting the retailer's retail beer business, except as expressly permitted by this chapter; or
 - (d) To enter into any lease or other agreement with any retail licensee to control the product or products sold by such retailer; or
 - (e) To provide for any rental or other charge to be paid to or by the retailer for product display or advertising display space.
- (2) A brewer, dealer, or wholesaler as an incident to merchandising in the ordinary course of business, and if available to all licensed retailers without discrimination, may sell to a retailer equipment, supplies, or clothing which may be used in conducting the retailer's retail business. A brewer, dealer or wholesaler may not sell such equipment or supplies at a price, or under terms, intended or designed to encourage or induce the retailer to use products of the seller to the exclusion of the products of other brewers, dealers or wholesalers. In no event shall the sales price be less than the reasonable value of such equipment or supplies.
- (3) Notwithstanding the provisions of subsection (2) of this section, a brewer, dealer, or wholesaler, as an incident to merchandising in the ordinary course of business, and if available to all retailers within the brewer, dealer or wholesaler's service area, without discrimination, may lend, give, furnish or sell to a retailer, the following items:
- (a) Necessary accessory equipment, such as shaft blowers, tapping devices, valves, beer hoses, washers, couplings, clamps, air hoses, vents, faucets, CO gas regulators, picnic or party pumps, together with necessary nonmechanical or nonenergized equipment to enable cooling of beer, and CO gas or ice when the same is furnished at the current retail price and as a bona fide sale in the regular course of business;
 - (b) Signs, posters, placards, designs, devices, decorations or graphic displays bearing advertising matter and for use in windows or elsewhere in the interior of a retail establishment. The brewer, dealer or wholesaler shall not directly or indirectly pay or credit the retailer for displaying such materials or for any expense incidental to their operation;
 - (c) Newspaper cuts, mats or engraved blocks for use in retailer's advertisements;
 - (d) Items such as sports schedules, posters, calendars, informational pamphlets, decals and other similar materials for display at the point of sale which bear brand advertising for beer prominently displayed thereon, and which items are intended for use by the retailer's customers off the licensed premises and which items are made available to the retailer's customers for such purpose;

(e) Temporary signs or banners displaying a brewer's, dealer's or wholesaler's name, trademark or label, which signs may be permitted to be temporarily displayed on the exterior portion of the retailer premises in connection with a special event, in accordance with such rules relating thereto as may be established by the director.

(4) A distributor may perform services incident to or in connection with the following:

(a) The stocking, rotation and restocking of beer sold and delivered to such licensed retailer on or in such licensed retailer's storeroom, salesroom shelves or refrigerating units, including the marking or remarking of containers of such beer to indicate the selling price as established by the retailer and to the arranging, rearranging, or relocating of advertising displays referred to in this section. For the purposes of this paragraph, a wholesaler may, with the permission of the retailer, and in accordance with space allocations directed by the retailer, set, remove, replace, reset or relocate all beer upon the shelves of the retailer. Labor performed or schematics prepared by the wholesaler relating to conduct authorized pursuant to this paragraph shall not constitute prohibited conduct or unlawful aid to a retailer;

(b)(i) The inspection of a licensed retailer's draught equipment to insure sanitation and quality control;

(ii) The instruction of licensed retailers in the proper use, maintenance and care of draught equipment, glasses and products used in the sale and dispensing of beer and the preparation and distribution of written information or instructions to licensed retailers with respect thereto;

(iii) The tapping of kegs;

(iv) A wholesaler may perform such services as may be required to maintain sanitation or quality control and which are incident to the repair and cleaning of a retailer's draught beer equipment and may furnish or sell the necessary equipment and repair parts and cleaning supplies required in the performance of such services.

(5) A wholesaler may assist a retailer by temporarily providing storage of the retailer's beer for a period not in excess of seven (7) days in the event that such storage is necessary to maintain the quality of such beer during a temporary loss or failure of the retailer's refrigeration equipment.

(6) A brewery, dealer or wholesaler may furnish or give to a retailer authorized to sell beer for consumption on the licensed premises, for sampling purposes only, a container of beer containing not more than sixty-four (64) ounces, not currently being sold by the retailer, and which container is clearly marked "NOT FOR SALE—FOR SAMPLING PURPOSES ONLY."

(7) The word "ale" or "malt liquor" may be substituted for "beer" on any sign used in connection with any advertising herein permitted, provided reference shall be to ale or malt liquor which has an alcoholic content not greater than the limitation prescribed in section 23-1002, Idaho Code.

(8) Every violation of the provisions of this section by a dealer, brewer or wholesaler, in which a licensed retailer shall have actively participated shall

constitute a violation on the part of such licensed retailer. [I.C., § 23-1033, as added by 1975, ch. 151, § 3, p. 383; am. 1976, ch. 34, § 1, p. 71; am. 1978, ch. 59, § 1, p. 115; am. 1984, ch. 232, § 1, p. 560; am. 1987, ch. 22, § 3, p. 29; am. 1991, ch. 159, § 1, p. 380; am. 1994, ch. 361, § 1, p. 1131.]

STATUTORY NOTES

Prior Laws. — Former § 23-1033, which comprised I.C., § 23-1033, as added by 1961, ch. 299, § 5, p. 543; am. 1963, ch. 184, § 1, p. 544; am. 1972, ch. 71, § 1, p. 146, was repealed by S.L. 1975, ch. 151, § 2.

Effective Dates. — Section 3 of S.L. 1984, ch. 232 declared an emergency. Approved April 4, 1984.

JUDICIAL DECISIONS

Constitutionality.

Where the plaintiff, in suit to enjoin enforcement of this section, did not meet the burden of establishing that this section denied the equal protection of the laws to wholesaler distributors of beer products in the state

as compared with the distributors of other beverages, including soft drinks and liquor, the section was not unconstitutional. *Western Beverage, Inc. v. State*, 96 Idaho 588, 532 P.2d 930 (1974).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Advertising plan.
Purpose.

Advertising Plan.

Cash cap advertising plan whereby brewery redeemed caps from consumer did not render financial assistance to the retailer nor permit the brewery either directly or indirectly to secure an interest in the wholesaler's or retailer's business. *Bohemian Breweries v. Koehler*, 80 Idaho 438, 332 P.2d 875 (1958).

Purpose.

Purpose of law was to prevent a brewer from owning or controlling the retail outlet and gaining advantage or control of the industry. *Bohemian Breweries v. Koehler*, 80 Idaho 438, 332 P.2d 875 (1958).

23-1033A. Prohibition of certain trade practices between brewers or dealers and wholesalers. — (1) It shall be unlawful for any brewer or dealer, directly or indirectly, or through an affiliate, subsidiary, officer, director, agent or employee:

- (a) To require that any wholesaler purchase any such beer or other distributed products from such person to the exclusion in whole or in part of beer or other products made or imported by other dealers or brewers;
- (b) To discriminate in price, allowance, rebate, refund, commission, discount, or service between the wholesalers purchasing beer or other products from such brewer or dealer;
- (c) To threaten any wholesaler with any discrimination prohibited under subsection (1)(b) of this section, with the purpose or effect of changing or maintaining resale prices of the wholesaler;
- (d) To impose conditions or restrictions on a wholesaler not generally imposed on other wholesalers of such brewer.

(2) Nothing in this section shall be deemed to prohibit brewers or dealers from selecting their own customers in bona fide transactions not in restraint of trade, nor to prohibit a brewer, or any affiliate or subsidiary of such

brewer, duly licensed as a wholesaler from selling and distributing beer or other products manufactured by such brewer at wholesale to the exclusion of beer or other products manufactured by any other brewers. The terms "wholesaler" and "wholesalers" as used in this section shall mean a wholesaler or wholesalers licensed and engaged as such in the sale and distribution of beer in the state of Idaho. [I.C., § 23-1033A, as added by 1977, ch. 148, § 1, p. 326; am. 2000, ch. 428, § 1, p. 1383.]

STATUTORY NOTES

Compiler's Notes. — Section 2 of S.L. 1977, ch. 148 read "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declara-

tion shall not affect the validity of remaining portions of this act".

Effective Dates. — Section 3 of S.L. 1977, ch. 148 provided that the act should take effect on and after July 1, 1977.

23-1034. Sanitation rules for retailers. — Licensed retailers authorized to sell beer for consumption upon such licensee's premises, shall keep their premises and all coils, cups, mugs, steins, glasses, and other utensils used in connection with the sale and dispensing of beer in a sanitary condition at all times, and shall comply with all rules issued by the department of health and welfare in the state of Idaho and applicable to the operation of the business of such licensed retailer. [I.C., § 23-1034, as added by 1961, ch. 299, § 5, p. 543; am. 1974, ch. 117, § 1, p. 1288; am. 1995, ch. 172, § 1, p. 654.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1974, ch. 117 declared an emergency. Approved March 27, 1974.

JUDICIAL DECISIONS

Cited in: *Western Beverage, Inc. v. State*, 96 Idaho 588, 532 P.2d 930 (1974).

23-1035. Retailer's signs. — Signs indicating that beer is sold or dispensed on any particular premises shall be displayed only on the exterior portion of the building where the licensed retailer shall carry on his business of selling beer at retail or on property on which any such building is situated and which is owned or possessed by such retailer as a part of his business premises. No more than two (2) single-faced signs or one (1) double-faced sign indicating that beer is sold or dispensed on the premises shall be displayed on such building or property. No dimension of any such sign shall exceed sixty (60) inches and the area of each face of a double-faced and of each single-faced sign shall not exceed fifteen hundred (1,500) square inches measured in such manner as the director may by regulation prescribe. No such sign shall display or make reference to the name of any brewer or the trade name, trademark or label of any brand of beer. [I.C.,

§ 23-1035, as added by 1961, ch. 299, § 5, p. 543; am. 1974, ch. 27, § 51, p. 811; am. 1994, ch. 14, § 9, p. 20.]

23-1036. Tap markers. — Every faucet, spigot or other dispensing apparatus used on the premises of a licensed retailer for dispensing draught beer shall conspicuously indicate thereon the brand or trade name of the beer or the trademark of the manufacturer of the beer drawn therefrom. [I.C., § 23-1036, as added by 1961, ch. 299, § 5, p. 543.]

23-1037. Determination to revoke, suspend or refuse renewal of license by director — Monetary penalty. — (1) In the event of a conviction of any brewer manufacturing beer in this state or of any wholesaler or retailer licensed under the provisions of this chapter, of any law of the state of Idaho, or of the United States, regulating, governing or prohibiting the sale, manufacture, transportation or possession of alcoholic beverages or intoxicating liquor, or if the director shall determine that any such licensee has violated any of the provisions of this chapter or any regulation of the director promulgated under the authority of this chapter, the director may, in his discretion, and in addition to any other penalty imposed, determine to revoke the license of any such licensee, to suspend the same for a period not in excess of six (6) months, or to refuse to grant a renewal of such license after the date of its expiration.

(2) When the director determines to suspend such license, the affected licensee may petition the director prior to the effective date of the suspension requesting that a monetary payment be allowed in lieu of the license suspension. If the director determines such payment to be consistent with the purpose of the laws of the state of Idaho and is in the public interest, he shall establish a monetary payment in an amount not to exceed five thousand dollars (\$5,000). The licensee may reject the payment amount determined by the director, and instead be subject to the suspension provisions of subsection (1) of this section. Upon payment of the amount established, the director shall cancel the suspension period. The director shall cause any payment to be paid to the treasurer of the state of Idaho for credit to the state's general account in the state operating fund.

(3) The suspension of a license for the sale of liquor or wine shall automatically result in the suspension of any license for the sale of beer held by the same licensee and issued for the same premises or location. Such additional suspension shall be equal in length to and run concurrently with the period of the suspension.

(4) When a proceeding to revoke or suspend a license has been or is about to be instituted, during the time a renewal application of such license is pending before the director, the director shall renew the license notwithstanding the pending proceedings, but such renewed license may be revoked or suspended without hearing if and when the previous license is, for any reason, revoked or suspended. [I.C., § 23-1037, as added by 1961, ch. 299, § 7, p. 543; am. 1974, ch. 27, § 52, p. 811; am. 1979, ch. 295, § 1, p. 777; am. 1981, ch. 199, § 2, p. 351; am. 1991, ch. 50, § 2, p. 91; am. 1993, ch. 347, § 2, p. 1290.]

JUDICIAL DECISIONS

ANALYSIS

Administrative proceeding.
Constitutionality.
License is privilege.
Operation of place of business.

Administrative Proceeding.

The proceedings provided by this section are not criminal in nature as contemplated by the constitutional provisions of Const., Art. I, § 8, since the hearing before the commissioner of law enforcement (now director of state police) on the suspension or revocation of a licensee's beer permit was an administrative proceeding; further, the constitutional guarantee of the right to trial by jury does not apply to special and summary proceedings created by statute subsequent to the adoption of the constitution where they are not in the nature of actions at common law and are dissimilar to such actions. *Blue Note, Inc. v. Hopper*, 85 Idaho 152, 377 P.2d 373 (1962).

Constitutionality.

Contention of appellant that this section is unconstitutional in allowing deprivation of property without due process of law and without affording the licensee an opportunity to be heard was not sustainable in view of § 23-1039 (see now § 23-1038) which afforded the right to judicial determination of the correctness of the commissioner's (now director's) findings or determination, being commensurate with what is believed to be requirements for due process of law. *Blue Note, Inc. v. Hopper*, 85 Idaho 152, 377 P.2d 373 (1962).

License Is Privilege.

The license to sell beer is a privilege, not a property right, which the legislature may grant or withhold at its pleasure and according to standards and requisites laid down by the legislature. *State v. Meyers*, 85 Idaho 129, 376 P.2d 710 (1962).

Operation of Place of Business.

When the licensee accepts the license, he impliedly agrees to obey and comply with the laws and reasonable regulations governing the privilege thereby granted. It becomes incumbent upon him to conduct the place of business so licensed in a lawful manner, whether it is operated by the licensee personally, or through his agent or employees. If the licensee elects to operate his business through employees, he must be responsible to the licensing authority for their conduct in the exercise of his license. *State v. Meyers*, 85 Idaho 129, 376 P.2d 710 (1962).

Cited in: *State v. Meyers*, 85 Idaho 129, 376 P.2d 710 (1962); *Nelson v. Hopper*, 86 Idaho 115, 383 P.2d 588 (1963); *LaVoie v. Commissioner of Law Enforcement*, 87 Idaho 536, 394 P.2d 300 (1964); *State, Dep't of Law Enforcement v. Engberg*, 109 Idaho 530, 708 P.2d 935 (Ct. App. 1985).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Declaratory judgment.
Ex parte proceedings.
Injunction.
Notice.

Declaratory Judgment.

The remedies afforded by former section were not exclusive and did not preclude an applicant for a beer license from seeking a declaratory judgment to determine the validity of village ordinance under which his application was denied. *Winther v. Village of Weippe*, 91 Idaho 798, 430 P.2d 689 (1967).

Ex Parte Proceedings.

The commissioner's (now director's) "determination" was an ex parte proceeding without any right of a licensee to appear or defend before the commissioner (now director). *Nelson v. Hopper*, 86 Idaho 115, 383 P.2d 588 (1963).

Injunction.

Where charge made by the commissioner (now director) did not show a violation of any of the provisions of the law regulating the business of the brewer, it did not state any grounds for the contemplated revocation or suspension of such brewery license; therefore, a court of equity would interfere by injunction to protect the litigant where it was made to appear that irreparable injury would result from further pursuit of the administrative process and the district court, being granted jurisdiction in all cases by the constitution both in law and in equity, had jurisdiction of the suit by the brewery seeking to enjoin the commissioner from suspending or revoking its

license on the grounds of an advertising plan it had been using. *Bohemian Breweries v. Koehler*, 80 Idaho 438, 332 P.2d 875 (1958).

Notice.

Notice to appellant that on or about the 23rd day of November, 1961, he sold or dispensed beer to a person or persons under age

of 20 (now 21) years failed to meet the minimum standards established by the legislature as to what the notice had to contain since it merely recited the commissioner's (now director's) determination that appellant had violated former section. *Nelson v. Hopper*, 86 Idaho 115, 383 P.2d 588 (1963).

23-1037A. Licenses — Suspension or revocation for violation of obscenity laws. — In the event of a conviction for a violation of chapter 41, title 18, Idaho Code, relating to obscenity, by any:

(1) licensee,

(2) agent of licensee or

(3) employee of licensee if such licensee knew or should have known in the exercise of reasonable diligence that said employee was violating the provisions of chapter 41, title 18, Idaho Code,

and if the violation committed by any of the above occurred on, or in connection with, premises licensed under this act by such licensee, the director shall suspend the license of such licensee for a period of six (6) months. If such licensee, or his agent or employee, has previously been convicted of a violation of chapter 41, title 18, Idaho Code, relating to obscenity, which violation occurred on, or in connection with, the premises licensed under this act by such licensee, the director shall revoke the license of such licensee. [I.C., § 23-1037A, as added by 1973, ch. 305, § 20, p. 655; am. 1974, ch. 27, § 53, p. 811.]

STATUTORY NOTES

Compiler's Notes. — The term "this act" means S.L. 1973, ch. 305, which is codified as §§ 18-1517A, 18-4101 to 18-4103, 18-4104, 18-4105, 18-4106 to 18-4110, 18-4113 to 18-4115, 23-933A, and 23-1037A. Probably, the

reference should be to "this chapter", being chapter 9, title 23, Idaho Code.

Effective Dates. — Section 22 of S.L. 1973, ch. 305 provided that the act should take effect on and after July 1, 1973.

23-1038. Suspension, revocation, and refusal to renew licenses.

— When the director shall make a determination to revoke, to suspend, or to refuse grant of renewal of license issued pursuant to the terms of this act for any violation of or failure to comply with the provisions of this act or rules promulgated by the director or the state tax commission pursuant to the terms and conditions of this act, procedures for the suspension, revocation or refusal to grant or renew licenses issued under this act shall be in accordance with the provisions of chapter 52, title 67, Idaho Code. Any hearing alleging a violation of chapter 9 or 10, title 23, Idaho Code, shall be conducted in the county where the alleged violation occurred. [I.C., § 23-1038, as added by 1980, ch. 220, § 2, p. 492; am. 2001, ch. 95, § 1, p. 243.]

STATUTORY NOTES

Cross References. — State tax commission, § 63-101.

Prior Laws. — Former § 23-1038, which comprised I.C., § 23-1038, as added by 1961,

ch. 299, § 7, p. 543; am. 1974, ch. 27, § 54, p. 811, was repealed by S.L. 1980, ch. 220, § 1, effective March 28, 1980.

Compiler's Notes. — The words "this act"

refer to S.L. 1980, ch. 220, § 1 compiled as this section.

Effective Dates. — Section 3 of S.L. 1980,

ch. 220 declared an emergency. Approved March 28, 1980.

JUDICIAL DECISIONS

Relation to Other Law.

Because in liquor license revocations, the Department of Law Enforcement (now state police) relies on a standard of proof akin to the preponderance of evidence standard generally applied in administrative hearings and provides for judicial review, establishment could not claim that revocation of its license

pursuant to § 23-1010A (see now § 23-614) deprived it of its constitutional due process rights or conferred judicial power to the legislatively created agency in contravention of Const., Art. V, § 2. *Northern Frontiers, Inc. v. State ex rel. Cade*, 129 Idaho 437, 926 P.2d 213 (Ct. App. 1996).

23-1039 — 23-1041. Director's determination to revoke, suspend, or deny renewal of license — Procedures. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised I.C., §§ 23-1039 — 23-1041, as added by 1961, ch. 299, § 7, p. 543; am.

1974, ch. 27, §§ 55-57, p. 811, were repealed by S.L. 1980, ch. 220, § 1, effective March 28, 1980.

23-1042. Procedure for other licensing authorities. — The licensing authority of any county or incorporated municipality shall have and exercise the same powers to revoke, suspend, or to refuse grant of renewal of a retailer's license issued or issuable by it, as are granted to the director in this act. The determination of any such licensing authority to revoke, suspend, or to refuse grant of renewal of any retailer's license, shall be upon the same grounds referred to in section 23-1037, Idaho Code, and may also be upon the grounds that the licensee has violated an ordinance validly enacted by it and regulating, governing or prohibiting the sale, manufacture, transportation or possession of alcoholic beverages or intoxicating liquor, and notice thereof shall be given, and proceedings to contest said determination allowed, as provided for in this act with respect to state licenses issued by the director. The order to show cause shall be addressed to the county commissioners of the county or to the city council of the incorporated municipality, requiring the commissioners or councilmen, or such representative as they may designate, to appear in response thereto. Service of the order to show cause and petition shall be ordered to be made upon the chairman of the board of county commissioners or mayor or city manager of the municipality, as the case may be. [I.C., § 23-1042, as added by 1961, ch. 299, § 7, p. 543; am. 1974, ch. 27, § 58, p. 811.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-1027.

23-1043. Notice of revocation or suspension to other licensing authorities. — When revocation or suspension of any licensed retailer's license shall become effective by reason of the determination made by any

licensing authority as in this act provided for, or by reason of the judgment of any district court on proceedings to contest any such determination, the licensing authority which made such determination shall forthwith give notice thereof in writing to the other licensing authorities from whom license was obtained by the licensee involved. [I.C., § 23-1043, as added by 1961, ch. 299, § 7, p. 543.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-1027.

23-1044. Procedure on refusal to grant license. — Upon a determination by the director or by the licensing authority of any county or municipality to refuse issuance of a license to an applicant upon original application, the same procedure herein provided for in cases involving refusal to grant renewal of license for notice and for proceedings to contest determination shall govern insofar as the same are applicable, except that issuance of temporary license shall not be required pending proceedings to contest determination. [I.C., § 23-1044, as added by 1961, ch. 299, § 7, p. 543; am. 1974, ch. 27, § 59, p. 811.]

23-1045. Appeals. — An appeal from the judgment of any district court on proceedings to contest a determination may be taken by either party to such proceedings to the Supreme Court of this state, in the same manner as in other civil actions. If the judgment of the district court shall affirm the determination of any licensing authority revoking or suspending license or refusing grant of renewal of license, further stay of the effective date of revocation or suspension or further continuance of temporary license pending appeal may be allowed if, in the discretion of the court and upon application therefor, order for such further stay or continuance shall be entered by the court. [I.C., § 23-1045, as added by 1961, ch. 299, § 7, p. 543.]

JUDICIAL DECISIONS

Declaratory Judgment.

The remedies afforded by this section are not exclusive and do not preclude an applicant for a beer license from seeking a declar-

atory judgment to determine the validity of village ordinance under which his application was denied. *Winther v. Village of Weippe*, 91 Idaho 798, 430 P.2d 689 (1967).

23-1046. Separability. — If any portion of this act shall be declared unconstitutional, it shall not invalidate the other provisions thereof. [I.C., § 23-1046, as added by 1961, ch. 299, § 8, p. 543.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-1027.

Effective Dates. — Section 9 of S.L. 1961,

ch. 299 declared an emergency. Approved March 14, 1961.

23-1047. Payment of taxes on beer. — Each person liable for payment of taxes on beer, as provided for in section 23-1048, Idaho Code, shall, on or before the 15th day of each month, or for such other period as the state tax commission may prescribe by rule, file a written report with the state tax commission showing all sales of beer for resale or consumption in this state made by such person during the calendar month or other period immediately preceding. Taxes payable with respect to such sales shall be paid by the person liable therefor at the time such report is filed. [I.C., § 23-1047, as added by 1961, ch. 259, § 1, p. 430; am. 2009, ch. 4, § 1, p. 6.]

STATUTORY NOTES

Cross References. — State tax commission, § 63-101.

Amendments. — The 2009 amendment, by ch. 4, rewrote the section, deleting obsolete language and allowing the state tax commission to promulgate rules authorizing payment of beer taxes by return for a period other than monthly.

Compiler's Notes. — The words "state tax commission" were substituted for the words "tax collector," because the office of the tax collector was abolished and his powers under §§ 23-1047 — 23-1056 were transferred to the state tax commission by S.L. 1967, ch. 125, § 7.

23-1048. Liability for payment of taxes on beer. — (1) Every sale of beer to a retailer licensed in this state or to a consumer in this state shall constitute a sale of beer for resale or consumption in this state and such wholesaler shall be liable for the payment of taxes thereon. Sales of beer by such wholesaler for the purpose of and resulting in export of such beer from this state for resale outside this state shall be exempt from the taxes on beer imposed by this state.

(2) Every sale of beer by a wholesaler licensed in this state shall constitute a sale of beer for resale or consumption in this state, whether said sale is made within or without this state, and such wholesaler shall be liable for the payment of taxes thereon, except as provided in subsection (1) hereof. [I.C., § 23-1048, as added by 1961, ch. 259, § 1, p. 430; am. 1974, ch. 27, § 60, p. 811; am. 1980, ch. 239, § 2, p. 554.]

23-1049. Security for tax. — The state tax commission, whenever it deems it necessary to insure compliance with this act, may require any person subject to this act to place with it such security as it may determine. The amount of the necessary security shall be fixed by the state tax commission but, except as provided hereafter, shall not be greater than three (3) times the estimated average monthly amount payable by such persons pursuant to this act. In the case of persons habitually delinquent in their obligations under this act, the amount of the security shall not be greater than five (5) times the estimated average monthly amount payable by such persons pursuant to this act. The amount of the security may be increased or decreased by the state tax commission at any time, subject to the limitations set forth herein.

The state tax commission may sell the security at public auction or, in the case of security in the form of bearer bonds issued by the United States or the state of Idaho which have a prevailing market price, at a private sale at a price not lower than the prevailing market price if it becomes necessary to

make such sale in order to recover any tax, interest or penalties due on any amount required to be collected. Notice of the sale must be given to the person who deposited the security at least ten (10) days before the sale. Such notice may be given personally or by mail addressed to the person at the address furnished to the state tax commission and as it appears in the records of the state tax commission. Upon such sale, any surplus above the amounts due shall be returned to the person who placed the security. [I.C., § 23-1049, as added by 1988, ch. 182, § 2, p. 319.]

STATUTORY NOTES

Cross References. — State tax commission, § 63-101.

Prior Laws. — Former § 23-1049, which comprised I.C., § 23-1049, as added by 1961, ch. 259, § 1, p. 430, was repealed by S.L. 1988, ch. 182, § 1.

Compiler's Notes. — The words "state tax commission" were substituted for the words

"tax collector." See Compiler's notes, § 23-1047.

The words "this act" mean S.L. 1988, ch. 182, which is codified as §§ 23-1049 and 23-1320. Probably, the reference should be to "this chapter", being chapter 10, title 23, Idaho Code.

23-1050. Penalty on failure to pay tax when due. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 23-1050, as added by 1961, ch. 259, § 1, p. 430; am. 1984, ch. 104, § 2, p. 242, was repealed by S.L. 1986, ch. 176, § 1.

23-1050A. Collection and enforcement. — The collection and enforcement procedures provided by the Idaho income tax act, sections 63-3042 through 63-3065A, inclusive, and sections 63-3068 and 63-3075, Idaho Code, shall apply and be available to the state tax commission for enforcement and collection of the tax imposed by this chapter, and said sections shall, for this purpose, be considered part of this act. Any reference to taxable year in the income tax act shall be, for the purposes of this act, considered a taxable period. [I.C., § 23-1050A, as added by 1980, ch. 239, § 3, p. 554; am. 1984, ch. 104, § 3, p. 242; am. 2007, ch. 10, § 9, p. 10.]

STATUTORY NOTES

Cross References. — State tax commission, § 63-101.

Amendments. — The 2007 amendment, by ch. 10, substituted "63-3075" for "63-3070."

Compiler's Notes. — The term "this act" at the end of the first sentence refer to S.L. 1980, ch. 239, which is codified as §§ 23-1008,

23-1048, 23-1050A, 23-1319, and 23-1322A. The term "this act" in the second sentence refer to S.L. 1984, ch. 104, which is codified as §§ 23-1006 and 23-1050A. Probably, both references should be to "this chapter", being chapter 10, title 23, Idaho Code.

23-1051. Regulations. — The state tax commission shall be, and it is hereby, authorized to adopt and promulgate such rules and regulations as may be necessary to assure payment of taxes on beer, including, but not limited to, rules and regulations; prescribing the form and content of monthly reports required; requiring the persons liable for payment of taxes on beer to show on such monthly reports information concerning their

inventories, purchases, sales and shipments of beer; requiring monthly informational reports from dealers and wholesalers licensed in this state concerning their inventories, purchases, sales and shipments of beer; requiring reports from carriers, both public and private, concerning deliveries of beer made in this state by such carriers and shipments of beer made by such carriers out of this state; requiring persons liable for payment of taxes imposed on beer and dealers and wholesalers licensed in this state to maintain complete and accurate books, records and accounts on transactions involving beer; and establishing grounds upon which delay in filing reports or paying taxes imposed on beer may be considered justifiable and without fault on the part of the person liable therefor. [I.C., § 23-1051, as added by 1961, ch. 259, § 1, p. 430.]

STATUTORY NOTES

Cross References. — State tax commission, § 63-101.

Compiler's Notes. — The words "state tax commission" and "it" were substituted for the

words "tax collector" and "he" in the first line of this section. See Compiler's notes, § 23-1047.

23-1052. License revocation or suspension for failure to pay or report tax. — Failure to make any report or to pay any taxes at the times required shall be grounds for the director to suspend or revoke the license or certificate of approval held by the person so defaulting in the manner provided by law. [I.C., § 23-1052, as added by 1961, ch. 259, § 1, p. 430; am. 1974, ch. 27, § 61, p. 811.]

STATUTORY NOTES

Effective Dates. — Section 196 of S.L. 1974, ch. 27 provided the act should take effect on and after July 1, 1974.

23-1053. Audits of records of licensee. — For the purpose of ascertaining compliance with the provisions of section 23-1047[, Idaho Code,] the state tax commission may, as often as it deems advisable, examine the accounts, records, documents and transactions, pertaining to or affecting the beer business of any person holding a license or certificate or [of] approval issued by this state under the provisions of this act. When examination involving any brewer or foreign distributor holding a certificate of approval issued by this state shall require an examiner to travel outside this state, the actual and necessary expenses of travel and subsistence necessarily incurred on account of the examination shall be paid by the holder of such certificate of approval upon presentation of an itemized statement certified by the examiner and approved by the state tax commission. [I.C., § 23-1053, as added by 1961, ch. 259, § 1, p. 430.]

STATUTORY NOTES

Cross References. — State tax commission, § 63-101.

Compiler's Notes. — The words "this act" refer to S.L. 1961, ch. 259, which is codified as

§§ 23-1047, 23-1048, 23-1051 to 23-1053, 23-1055, and 23-1056. Probably, the reference should be to “this chapter”, being chapter 10, title 23, Idaho Code.

The words “state tax commission” were substituted for the words “tax collector” wherever

appearing, and the word “it” was substituted for the word “he” in the third line of this section. See Compiler’s Notes, § 23-1047.

The bracketed insertions in the first sentence were inserted by the compiler.

23-1054. Refund of taxes. — (1) If the tax commission determines that any amount due under this chapter has been paid more than once or has been erroneously or illegally collected or computed, the commission shall set forth that fact in its records and the excess amount paid or collected may be credited on any amount then due and payable to the commission from that person and any balance refunded to the person by whom it was paid or to his successors, administrators or executors. The tax commission is authorized and the state board of tax appeals is authorized to order the tax commission in proper cases to credit or refund such amounts whether or not such payments have been made under protest and certify such refund to the state board of examiners.

(2) No such credit or refund shall be allowed or made after three (3) years from the time the payment was made, unless before the expiration date of that period a claim therefor is filed by the taxpayer. The three (3) year periods allowed by this section for making refunds or credit claims shall not apply in cases where the tax commission asserts a deficiency of tax imposed by this chapter and taxpayers desiring to appeal or otherwise seek a refund of amounts paid in obedience to those deficiencies must do so within the time limits elsewhere prescribed by law. [I.C., § 23-1054, as added by 1986, ch. 73, § 4, p. 201.]

STATUTORY NOTES

Cross References. — Board of tax appeals, § 63-3801 et seq.

State board of examiners, § 67-2001 et seq.

State tax commission, § 63-101.

Prior Laws. — Former § 23-1054, which

comprised I.C., § 23-1054, as added by 1961, ch. 259, § 1, p. 430; am. 1980, ch. 239, § 4, p. 554; am. 1984, ch. 104, § 4, p. 242, was repealed by S.L. 1986, ch. 73, § 1.

23-1055. Unlawful sale, purchases and acts. — It shall be unlawful: (a) for any brewer manufacturing beer outside this state or for any foreign distributor to sell beer for resale or consumption in this state except to dealers and wholesalers licensed in this state; (b) for any dealer or wholesaler licensed in this state to purchase beer manufactured outside this state except from brewers or foreign distributors holding certificates of approval issued by this state and from other dealers or wholesalers licensed in this state; (c) for any person to sell beer for resale or consumption in this state or to transfer or import beer into this state for the purpose of selling such beer for resale or consumption in this state, unless such person shall hold a license or certificate of approval issued by this state pursuant to which any such sale, transportation or importation shall be authorized; (d) for any retailer licensed in this state to purchase beer for resale except from a dealer or wholesaler licensed in this state. Any beer sold, transported or imported in violation of the provisions of this section shall be subject to

seizure, forfeiture and sale in the same manner as provided for in section 23-1008, as amended. [I.C., § 23-1055, as added by 1961, ch. 259, § 1, p. 430.]

OPINIONS OF ATTORNEY GENERAL

Although the legislature failed to amend the subsection (d) requirement that retailers purchase beer for resale only from licensed dealers or distributors, an Idaho court would find this requirement repealed by implication

to the extent it conflicts with § 23-1003(d) and (e) and the exemption granted to small breweries from other requirements of a wholesaler's license. OAG 88-8.

23-1056. Use of alternative method — Time when authorized. —

Use of said alternative method of payment of taxes imposed on beer as provided for in sections 23-1047 through 23-1055[, Idaho Code], shall not be authorized until the state tax commission shall adopt and promulgate a regulation permitting use of such method. On and after the effective date of any such regulation use of such alternative method shall be exclusive, provided, however, tax stamps theretofore purchased by any person liable for payment of taxes on beer and on hand may be used by such person and a credit shall be allowed to him against taxes payable with monthly reports subsequently filed in such manner as the state tax commission may prescribe, or said stamp may be submitted for redemption and refund thereon. Upon thirty (30) days written notice mailed to each brewer and dealer licensed in this state and to each brewer and foreign distributor holding a certificate of approval issued by this state the state tax commission may at any time rescind any such regulation and from and after the effective date of rescission only the method for payment of taxes on beer by use of tax stamps as provided for in section 23-1008[, Idaho Code], as amended, shall be used. [I.C., § 23-1056, as added by 1961, ch. 259, § 1, p. 430.]

STATUTORY NOTES

Cross References. — State tax commission, § 63-101.

Compiler's Notes. — The bracketed insertions were added by the compiler.

The words "state tax commission" were substituted for the words "tax collector." See Compiler's Notes, § 23-1047.

CHAPTER 11

DISTRIBUTORS AND SUPPLIERS OF BEER

SECTION.

- 23-1101. Declaration of policy.
- 23-1102. Definitions.
- 23-1103. Prohibited acts.
- 23-1104. Notice of transfer by distributor —
Consent by supplier.
- 23-1105. Supplier's right to amend, cancel or fail to renew immediately upon written notice —
Grounds.
- 23-1106. Supplier's right to discontinue distribution of brand.

SECTION.

- 23-1107. Supplier requirements upon amendment, cancellation or refusal to renew an agreement.
- 23-1108. Notice requirements.
- 23-1109. Transferee of distributor's business bound by agreements in effect at time of transfer — Supplier's successor bound by agreements in effect at time of succession to supplier's interest.

SECTION.

23-1110. Compensation to distributor upon termination, cancellation or nonrenewal of agreement.

SECTION.

23-1111. Arbitration.

23-1112. Judicial remedies of parties.

23-1113. Waiver of benefits of chapter.

23-1101. Declaration of policy. — It is hereby declared to be the policy of the legislature of the state of Idaho to regulate and control the importation, sale and distribution of beer within the state of Idaho, in the exercise of its powers under the twenty-first amendment to the constitution of the United States of America, and pursuant to section 26, article III, of the constitution of the state of Idaho. In furtherance of that policy, the restrictions and regulations contained in this chapter are enacted to promote equality and fair dealing in the business relationship between Idaho distributors of beer and the suppliers of such product and to assure the establishment and maintenance of an orderly system for the distribution of such products in accordance with the laws of this state regulating the sale and distribution of such products to the public. [I.C., § 23-1101, as added by 1993, ch. 312, § 1, p. 1148.]

STATUTORY NOTES

Prior Laws. — Former §§ 23-1101 — 23- §§ 1-10, 12, were repealed by S.L. 1949, ch. 1111, which comprised S.L. 1933 (E.S.), ch. 17, 251, § 1.

23-1102. Definitions. — Whenever used in this chapter, the following words or phrases, or the plural thereof, unless the context clearly requires otherwise, shall have the meaning ascribed to them in this section:

(1) “Agreement” means any agreement between a distributor and a supplier, whether oral or written, whereby a distributor is granted the right to purchase a brand, or brands, of beer sold by a supplier and to resell such products within the state of Idaho.

(2) “Amend,” “amendment,” or “modify,” means any alteration or change in the agreement, which causes a material change in the distributor’s business or relationship with the supplier, and which alteration or change does not apply to all distributors in the state of Idaho who distribute supplier’s products.

(3) “Ancillary business” means a business owned by a distributor, by a substantial stockholder of a distributor, or by a substantial partner of a distributor, the primary business of which is directly related to the transporting, storing or marketing of the supplier’s products.

(4) “Designated member” means:

(a) The spouse, child, grandchild, parent, brother or sister of a deceased individual who owned an interest in a distributor;

(b) Any person who inherits an ownership interest in a distributor;

(c) The appointed and qualified personal representative or the testamentary trustee of a deceased individual owning an interest in a distributor;

(d) The person appointed by a court as the guardian or conservator of the property of an incapacitated individual owning an interest in a distributor; or

(e) A person who has succeeded to the deceased individual's ownership interest in the distributor pursuant to a written contract or instrument which has been previously approved, in writing, by a supplier.

(5) "Distributor" means a business entity, whether sole proprietorship, partnership, corporation, association, syndicate, or any other combination of persons, licensed by the state of Idaho to sell beer to retailers. The term "distributor" shall not include a brewery, brewery branch or subsidiary thereof, which is licensed by the state of Idaho and which license authorizes sales of beer to be made directly to a retailer, whether or not licensed as a distributor by the state of Idaho.

(6) "Good faith" means honesty in fact in the conduct or transaction involved and the observance of reasonable commercial standards of fair dealing in the trade, as such term and standards are defined in, and interpreted pursuant to, the uniform commercial code, title 28, Idaho Code.

(7) "Person" means any individual, partnership, corporation, association, syndicate, or any other combination of individuals or corporations.

(8) "Reasonable standards and/or qualifications" mean those criteria established and consistently applied by a supplier to distributors within the state of Idaho and similarly situated distributors in adjoining states who:

(a) Have entered into, continued or renewed an agreement with the supplier during a period of twenty-four (24) months prior to the proposed transfer of the distributor's business; or

(b) Have changed managers or successor managers during a period of twenty-four (24) months prior to the proposed change in manager or successor manager of the distributor.

(9) "Retaliatory action" includes the refusal to continue an agreement, or a material part thereof, or a material reduction in the quality of service or quantity of products available to a distributor under an agreement, which refusal or reduction is not made in good faith.

(10) "Similarly situated distributors in adjoining states" mean distributors in adjoining states having an agreement with the supplier who have reasonably comparable business, area and market characteristics to an Idaho distributor of supplier's products, which business, area and market characteristics may include, but are not limited to, the following: gross sales' volume concerning supplier's products, facilities, number of employees, business capitalization, market areas, considering the population and the demographics thereof, and the square miles of area served.

(11) "Substantial stockholder" or "substantial partner" means a person who owns an interest of ten percent (10%) or more of a distributor.

(12) "Supplier" means any person, either within or outside the state of Idaho, who enters into an agreement with a distributor for the sale of beer to such distributor with the intent that such products will be resold by the distributor to retailers within the state of Idaho. The term "supplier" shall also be deemed to include the successor in interest to a supplier's business generally, or with reference to a specific brand or brands, of beer. The term "supplier" shall not include any person who produces fewer than thirty thousand (30,000) barrels of beer annually and who is licensed by the state of Idaho for such purpose.

(13) "Transfer of distributor's business" or similar phrase, means the voluntary sale, assignment or other transfer of all or control of the business, or all or substantially all of the assets of the distributor, or all or control of the capital stock of the distributor, including without limitation the sale or other transfer of capital stock or assets by merger, consolidation or dissolution, or of the capital stock of the parent corporation, or of the capital stock or beneficial ownership of any other entity owning or controlling the distributor. [I.C., § 23-1102, as added by 1993, ch. 312, § 1, p. 1148.]

STATUTORY NOTES

Prior Laws. — Former § 23-1102 was repealed. See Prior Laws, § 23-1101.

23-1103. Prohibited acts. — The following are prohibited under the provisions of this chapter:

- (1) A distributor shall not:
 - (a) Transfer the distributor's business without giving the supplier written notice of the proposed transfer of the business as required under the provisions of this chapter.
 - (b) Transfer the distributor's business without receiving the supplier's written approval for the proposed transfer, where required by an agreement and consistent with the provisions of this chapter.
 - (c) Distribute, sell or deliver beer to a retailer whose premises are situated outside the geographic territory agreed upon by the distributor and the supplier, as the area in which the distributor will sell beer purchased from the supplier, without the consent of the supplier and the distributor who has been assigned such territory by the supplier.
- (2) A supplier shall not, directly or indirectly, or through an affiliate or subsidiary:
 - (a) Require any distributor to do any illegal act or to violate any law or regulation either by threatening to amend, modify, cancel, terminate, or refuse to renew any agreement existing between the supplier and the distributor, or by any other means.
 - (b) Require any distributor to accept delivery of any beer or other commodity which has not been ordered by the distributor or, if ordered, has been canceled by the distributor in accordance with reasonable cancellation procedures of the supplier. Provided however, a supplier may impose reasonable inventory requirements upon a distributor if the requirements are made in good faith and are generally applied to other distributors in Idaho and similarly situated distributors in adjoining states having an agreement with the supplier.
 - (c) Withhold delivery of beer ordered by a distributor or change a distributor's allocation of a brand or brands by the supplier if the withholding or change is not made in good faith.
 - (d) Engage in any conduct that requires a distributor to fix or maintain the resale prices at which the distributor sells products received from the supplier.
 - (e) Require a distributor to purchase one (1) or more brands of beer or other products in order for the distributor to purchase another brand or

brands of beer. Provided however, that if a distributor has agreed to distribute a brand or brands of beer before the effective date of this chapter [July 1, 1993], the distributor shall continue to distribute the brand or brands of beer in conformance with the provisions of this chapter.

(f) Require a distributor to assent to any unreasonable requirement, condition, understanding or term of an agreement which limits the distributor's right to sell a brand or brands of beer or other products of any other supplier.

(g) Require a distributor to submit financial reports or other specific financial or sales information regarding products sold by the distributor, other than those of the supplier, as a condition of renewal or continuation of an agreement.

(h) Require a distributor to terminate the designation of an individual as a manager or successor manager of a distributor, or refuse to approve the designation of an individual as manager or successor manager, unless the manager or successor manager fails to meet reasonable standards or qualifications for such position which standards or qualifications are nondiscriminatory and are applied uniformly to all distributors similarly situated. In any legal action, or other dispute resolution proceedings, challenging such termination or designation, the distributor shall have the burden of proving that the termination of the manager or successor manager was required by the supplier or that the supplier refused to approve the designation of an individual as manager or successor manager. Upon the distributor making such prima facie showing, the supplier shall have the burden of proving that such person fails to meet nondiscriminatory and reasonable standards and qualifications.

(i) Take any retaliatory action against a distributor who, with just cause, files a complaint with any regulatory body or in any court of law regarding an alleged violation of federal, state or local law or of any administrative rule by the supplier. [I.C., § 23-1103, as added by 1993, ch. 312, § 1, p. 1148.]

STATUTORY NOTES

Prior Laws. — Former § 23-1103 was repealed. See Prior Laws, § 23-1101.

Compiler's Notes. — The bracketed inser-

tion in paragraph (2)(e) was added by the compiler.

23-1104. Notice of transfer by distributor — Consent by supplier.

— (1) A distributor who proposes to transfer the distributor's business shall give the supplier written notice of the distributor's proposed transfer of the distributor's business not less than thirty (30) days prior to the date specified in the notice for completion of the transfer, except in cases of transfer to a designated member, in which case the transferee shall give the supplier written notice of the transfer within a reasonable time after the transfer is completed.

(2) A supplier's written consent shall be required for a transfer of the distributor's business to a person other than a designated member. Provided however, written consent from a supplier shall be required for a transfer of the

distributor's business to a designated member if any of the following conditions apply:

- (a) The transferee or any owner of the transferee has been convicted of a felony under the laws of any state or of the federal government which would adversely affect the good will or interests of the supplier.
 - (b) The transferee or any owner of the transferee has had a license for the sale of beer, wine or any alcoholic beverage suspended or revoked by the regulatory agency of the federal government or of any state and such suspension or revocation interrupted service by the transferee or by the owner of the transferee for a period of more than thirty (30) days.
 - (c) The transferee or any owner of the transferee is insolvent within the definition of section 101, title 11, United States Code, or there has been a liquidation, dissolution or assignment for the benefit of creditors of substantially all of the transferee's business or assets, or an order for relief under chapter 7, title 11, United States Code, has been entered with respect to the transferee.
 - (d) The transferee or any owner of the transferee has had any previous agreement with the supplier involuntarily terminated, canceled, discontinued or not renewed by the supplier for good cause.
- (3) If the transferee is a designated member, a supplier shall not interfere with, prevent, or unreasonably delay the transfer of the distributor's business. An unreasonable delay is one that exceeds thirty (30) days after the service of the notice required by subsection (1) of this section and the receipt of all material information reasonably requested from which the supplier can determine whether the transfer to the designated member may require the supplier's consent. If consent is required, a supplier may not withhold consent or unreasonably interfere with the transfer of the distributor's business if the transferee meets reasonable standards and qualifications which are material and nondiscriminatory.
- (4) If the transferee is not a designated member, a supplier may not withhold consent or unreasonably interfere with or delay the transfer of the distributor's business if the transferee meets reasonable standards and qualifications which are material and nondiscriminatory. An unreasonable delay is one that exceeds thirty (30) days after the receipt of all material information reasonably requested to enable the supplier to determine whether the transferee meets reasonable standards and qualifications.
- (5) In any legal action, or other dispute resolution proceeding, between a distributor and supplier relating to the supplier's refusal to consent to the transfer of the distributor's business to a transferee, the distributor shall have the burden of proving that the supplier withheld consent, interfered with or delayed the proposed transfer of the distributor's business. Upon the distributor making such prima facie showing, the supplier shall have the burden of proving that the proposed transferee does not meet such reasonable standards and qualifications. [I.C., § 23-1104, as added by 1993, ch. 312, § 1, p. 1148.]

STATUTORY NOTES

Prior Laws. — Former § 23-1104 was repealed. See Prior Laws, § 23-1101.

23-1105. Supplier's right to amend, cancel or fail to renew immediately upon written notice — Grounds. — A supplier may amend, modify, terminate, cancel, discontinue or fail to renew an agreement with a distributor immediately upon written notice given by the supplier as provided in section 23-1108, Idaho Code, only if any of the following occur:

(1) Revocation or suspension of a governmental permit or license held by the distributor whereby the distributor cannot service the distributor's sales territory for a period of more than thirty (30) days.

(2) The distributor is insolvent within the definition of section 101, title 11, United States Code, or there has been a liquidation, dissolution or assignment for the benefit of creditors of substantially all of the distributor's business or assets, or an order for relief under chapter 7, title 11, United States Code, has been entered with respect to the distributor.

(3) A stockholder or a partner of the distributor who holds or owns ten percent (10%) or more of the stock or value of the distributor has been convicted of a felony under the laws of the United States or the laws of any state which conviction would adversely affect the good will or interests of the distributor or supplier. Provided however, that if another stockholder or other stockholders, or partner or partners, or a designated member or members, or other person, notifies the supplier in writing prior to the conviction of an intent to purchase the partnership interest or the stock of the offending stockholder or partner and then purchases the interest or stock within thirty (30) days after a final conviction or within thirty (30) days after the supplier has consented to the transfer, whichever event occurs last, the supplier shall not amend, modify, terminate, cancel, discontinue or fail to renew such agreement. Any purchase of an interest or stock pursuant to the provisions of this subsection shall comply with the requirements and conditions of supplier consent contained in the provisions of section 23-1104, Idaho Code.

(4) An assignment of the distributor's agreement with the supplier, or a transfer of the distributor's business, other than to a designated member, has been made without written notice as provided under the provisions of this chapter.

(5) Fraud by the distributor in his dealings with the supplier or with reference to supplier's products.

(6) The distributor has failed to pay for products ordered and delivered in accordance with established terms with a supplier and fails to make full payment within five (5) business days after receipt of written notice of the delinquency and demand for immediate payment from the supplier.

(7) A transfer of the distributor's business is made despite timely and proper notice of disapproval by the supplier.

(8) The distributor has sold or delivered beer to a retailer whose premises are outside of the territory assigned to the distributor by the supplier in the agreement. [I.C., § 23-1105, as added by 1993, ch. 312, § 1, p. 1148.]

STATUTORY NOTES

Prior Laws. — Former § 23-1105 was repealed. See Prior Laws, § 23-1101.

23-1106. Supplier's right to discontinue distribution of brand. —

(1) A supplier may amend, modify, terminate, cancel, discontinue or fail to renew an agreement, with reference to a brand sold by a supplier, not less than thirty (30) days after written notice is given by the supplier as provided in section 23-1108, Idaho Code, if the supplier discontinues production or discontinues distribution in this state of a brand of beer sold by the supplier to the distributor.

(2) Nothing in this section shall prohibit a supplier from conducting test marketing of a product which is not currently being sold in this state, provided that the supplier has notified the director, Idaho state police, in writing, of its plans to conduct test marketing, which notice shall describe the market area in which the test shall be conducted, the name or names of the distributor or distributors who will be selling the product, the name or names of the product being tested, and the period of time, not to exceed eighteen (18) months, during which the testing will take place.

(3) If a supplier causes the discontinuance of distribution in this state of a brand of beer, except a brand that is being test marketed pursuant to subsection (2) of this section, then that brand cannot be reintroduced or sold to distributors within this state by any supplier for a period of six (6) months after providing the written notice required in the provisions of this section. A supplier who is test marketing a brand or brands in this state, in compliance with subsection (2) of this section, shall not be subject to the six (6) month reintroduction limitation set forth in the provisions of this subsection.

(4) Whenever a supplier discontinues distribution in this state of a brand of beer, the supplier shall be required, at the distributor's request, to purchase from the distributor any unsold inventory of that brand. [I.C., § 23-1106, as added by 1993, ch. 312, § 1, p. 1148; am. 2000, ch. 469, § 71, p. 1450.]

STATUTORY NOTES

Prior Laws. — Former § 23-1106 was repealed. See Prior Laws, § 23-1101.

23-1107. Supplier requirements upon amendment, cancellation or refusal to renew an agreement. — Except as provided in sections 23-1105 and 23-1106, Idaho Code, a supplier may not amend, modify, terminate, cancel, discontinue, or refuse to renew an agreement with a distributor, or cause a distributor to resign from an agreement, unless the supplier has complied with the following requirements:

(1) The supplier shall give written notice to the distributor, as provided in section 23-1108, Idaho Code.

(2) The supplier acts in good faith. In any legal action, or dispute resolution proceeding, the supplier shall have the burden of proving that it acted in good faith.

(3) The supplier has good cause. In any legal action, or dispute resolution proceeding, the supplier shall have the burden of proving that it has good cause. Good cause exists when all of the following have occurred:

(a) The distributor has failed to comply substantially with essential and reasonable requirements imposed upon him by the agreement, if such requirements are not discriminatory, either by their terms or in the method of their enforcement, as compared with requirements imposed on other distributors in Idaho or similarly situated distributors in adjoining states and if such requirements are not in violation of any law or regulation.

(b) The supplier first acquired knowledge of the failure described in subsection (3)(a) of this section not more than twenty-four (24) months before the date notification was given pursuant to the provisions of section 23-1108, Idaho Code.

(c) The supplier has given written notice to the distributor, stating specifically the manner in which the distributor has failed to comply with the agreement.

(d) The distributor was given adequate opportunity to use good faith efforts to correct the failure to comply with the agreement. Adequate opportunity shall be thirty (30) days after receipt of the supplier's notice to submit a plan of corrective action to comply with the agreement and an additional ninety (90) days after the submission of a plan of corrective action to correct the failure in accordance with the plan. [I.C., § 23-1107, as added by 1993, ch. 312, § 1, p. 1148.]

STATUTORY NOTES

Prior Laws. — Former § 23-1107 was repealed. See Prior Laws, § 23-1101.

23-1108. Notice requirements. — Notice by a supplier of any proposed amendment, modification, termination, cancellation, discontinuance or refusal to renew an agreement with the distributor shall be written, shall be provided to the distributor in the manner provided in the agreement, if written, or if the agreement is oral, by certified mail, and the notice shall contain all of the following:

(1) A statement of intention to amend, modify, terminate, cancel, discontinue or refuse to renew the agreement.

(2) A statement of the reason(s) for the amendment, modification, termination, cancellation, discontinuance or nonrenewal.

(3) The date on which the amendment, modification, termination, cancellation, discontinuance or nonrenewal will take effect. [I.C., § 23-1108, as added by 1993, ch. 312, § 1, p. 1148.]

STATUTORY NOTES

Prior Laws. — Former § 23-1108 was repealed. See Prior Laws, § 23-1101.

23-1109. Transferee of distributor's business bound by agreements in effect at time of transfer — Supplier's successor bound by agreements in effect at time of succession to supplier's interest. —

(1) A transferee of a distributor's business that continues to operate the

business shall have the benefit of and be bound by all terms and conditions of the agreement with the supplier in effect on the date of the transfer.

(2) A successor to a supplier's interest in a particular brand or brands of beer, whether acquired by purchasing of the brand name or all or substantially all of the stock or assets of the supplier of that brand or brands, or who has been granted the marketing rights to a particular brand or brands of beer shall be bound by all terms and conditions of each agreement with distributors with respect to that brand or brands in effect on the date of the succession to such interest as a condition of such successor in interest continuing to sell that brand or brands to distributors for resale within this state. [I.C., § 23-1109, as added by 1993, ch. 312, § 1, p. 1148.]

STATUTORY NOTES

Prior Laws. — Former § 23-1109 was repealed. See Prior Laws, § 23-1101.

23-1110. Compensation to distributor upon termination, cancellation or nonrenewal of agreement. — (1) In the event that an agreement is terminated, canceled or not renewed by a supplier, the distributor shall be entitled to reasonable compensation for the laid-in cost to the distributor of the inventory of the supplier's products, including any taxes paid on the inventory by the distributor, together with a reasonable charge for handling of the products.

(2) In the event that an agreement is terminated, canceled or not renewed by a supplier in bad faith or for other than good cause, the distributor shall be entitled to additional compensation from the supplier for:

(a) The fair market value of any and all assets, including ancillary businesses, relating to the transporting, storing or marketing of supplier's products; and

(b) The good will of the business.

(3) The total compensation to be paid by the supplier shall be reduced by any sum received by the distributor from sale of assets of the business used in the distribution of the supplier's products as well as by whatever value such assets may have to the distributor that are unrelated to the supplier's products.

(4) As used in subsection (2)(a) of this section, fair market value means the highest dollar amount at which a seller would be willing to sell and a buyer would be willing to buy when each possesses all information relevant to the transaction. [I.C., § 23-1110, as added by 1993, ch. 312, § 1, p. 1148.]

STATUTORY NOTES

Prior Laws. — Former § 23-1110 was repealed. See Prior Laws, § 23-1101.

23-1111. Arbitration. — Any dispute arising under the provisions of this chapter may be settled by such dispute resolution procedures, including arbitration, as may be provided by a written agreement between the parties. In the absence of a written agreement providing for dispute resolution

procedures, any dispute arising under the provisions of this chapter may be settled by arbitration, if every party involved in the dispute agrees to arbitrate. Arbitration shall be conducted in accordance with the uniform arbitration act of the state of Idaho, chapter 9, title 7, Idaho Code. [I.C., § 23-1111, as added by 1993, ch. 312, § 1, p. 1148.]

STATUTORY NOTES

Prior Laws. — Former § 23-1111 was repealed. See Prior Laws, § 23-1101.

23-1112. Judicial remedies of parties. — (1) If a supplier engages in conduct prohibited under the provisions of this chapter, a distributor with which the supplier has an agreement may maintain a civil action against the supplier to recover actual damages, court costs, and, in the court's discretion, attorney's fees, reasonably incurred as the result of the prohibited conduct. If a distributor engages in conduct prohibited under the provisions of this chapter, a supplier with which the distributor has an agreement may maintain a civil action against the distributor to recover actual damages, court costs and, in the court's discretion, attorney's fees reasonably incurred as a result of the prohibited conduct. Actual damages shall include damages to any ancillary business incurred as a result of the prohibited conduct.

(2) A supplier or distributor may bring an action for declaratory judgment for determination of any controversy arising pursuant to the provisions of this chapter.

(3) Upon proper application to the court, a supplier or distributor may obtain injunctive relief against any violation of the provisions of this chapter.

(4) The remedies provided in this section shall not abolish any other cause of action or remedy available to the supplier or the distributor.

(5) Nothing contained in this chapter shall give rise to a claim against the supplier or distributor by any proposed transferee of the distributor's business. [I.C., § 23-1112, as added by 1993, ch. 312, § 1, p. 1148.]

23-1113. Waiver of benefits of chapter. — No agreement shall require a supplier or distributor to waive any rights granted pursuant to any provision of this chapter and the provisions of any agreement which would have such an effect shall be null and void. However, if a good faith dispute arises between the parties as to the meaning of any rights or obligations created in the provisions of this chapter, or the performance by a party of its obligations, the parties may enter into a written voluntary settlement of the dispute. [I.C., § 23-1113, as added by 1993, ch. 312, § 1, p. 1148.]

STATUTORY NOTES

Compiler's Notes. — Section 2 of S.L. 1993, ch. 312 read: "If any provision of this act or the applications thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect

without the invalid provision or application, and to that end the provisions of this act are declared to be severable.”

CHAPTER 12

IDENTIFICATION CARDS

SECTION.
23-1201 — 23-1207. [Repealed.]

23-1201 — 23-1207. Application — Duties of sheriff — Fees — Fraudulent misrepresentation — Penalty. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — These sections, which comprised S.L. 1961, ch. 203, §§ 1-7, p. 321; am. 1972, ch. 330, §§ 9, 10, p. 828; am. 1972, ch. 332, §§ 9, 10, p. 834, were repealed by S.L. 1974, ch. 27, § 1, p. 811.

CHAPTER 13

COUNTY OPTION KITCHEN AND TABLE WINE ACT

SECTION.
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- events on retail wine license premises.
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- 23-1328. Retailer's name on labels prohibited — Discrimination among retailers prohibited.
- 23-1328A. Prohibition of certain trade practices between vintners, wineries, importers or dealers and distributors.
- 23-1329. Schedules of prices — Filing by importers and distributors — Modification or withdrawal.
- 23-1330. Rules and regulations by director.

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- 23-1331. Suspension, revocation, and refusal to renew licenses and permits — Monetary penalty.
- 23-1332. Sale by by-the-drink liquor licensees.
- 23-1333. Open or unsealed containers of wine in motor vehicles on highways prohibited.
- 23-1334. Minors — Authorization to deliver.
- 23-1335. Violations of act misdemeanors.
- 23-1336. Wine sold or donated to persons or associations for benevolent, charitable or public purposes.
- 23-1337. Alcohol beverage catering permit.
- 23-1338. Wine product service and sales — Sponsored events.

23-1301. Short title. — This act shall be known and designated as the “County Option Kitchen and Table Wine Act.” [1971, ch. 156, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — The words “this act” refer to S.L. 1971, ch. 156, compiled as §§ 23-1301 to 23-1307, 23-1308, 23-1309, 23-1310 to 23-1319, 23-1322, 23-1323, 23-1326 to 23-

1328, and 23-1329 to 23-1335. Probably, the reference should be to “this chapter”, being chapter 13, title 23, Idaho Code.

23-1302. Purpose and construction of act. — The purpose of this act is to regulate the importation, distribution, and sale, both at wholesale and retail, of wines customarily used in home and family dining and cooking while reserving to each county of this state the right to prohibit the distribution or sale of wine within their borders. This act shall not be construed to affect laws regulating the retail sale of alcoholic beverages, nor shall it be construed to in any way enlarge the class of persons who may lawfully buy, possess, or consume any variety of wine whatever its alcoholic content. [1971, ch. 156, § 2, p. 760.]

STATUTORY NOTES

Compiler's Notes. — For words “this act”, see Compiler's Notes, § 23-1301.

23-1303. Definitions. — (1) The following terms as used in this chapter are hereby defined as follows:

- (a) “Dessert wine” means only those beverages that are designated or labeled, pursuant to the federal alcohol administration act, as “sherry,” “madeira” or “port,” which contain more than sixteen percent (16%) alcohol by volume, but do not exceed twenty-one percent (21%) alcohol by volume. Dessert wine as defined herein shall not be deemed to be a spirit based beverage for the purposes of paragraph (g) of this subsection.
- (b) “Director” means the director of the Idaho state police.
- (c) “Distributor” means a person to whom a wine distributor's license has been issued.

(d) "Domestic produced product" means wine at least seventy-five percent (75%) of which by volume is derived from fruit or agricultural products grown in Idaho.

(e) "Importer" means a person to whom a wine importer's license has been issued.

(f) "Live performance" means a performance occurring in a theater and not otherwise in violation of any provision of Idaho law.

(g) "Low proof spirit beverages" means any alcoholic beverage containing not more than fourteen percent (14%) alcohol by volume obtained by distillation mixed with drinkable water, fruit juices and/or other ingredients in solution. These products shall be considered and taxed as wine. Spirit based beverages exceeding fourteen percent (14%) alcohol by volume shall be considered as liquor and sold only through the division system.

(h) "Person" includes an individual, firm, copartnership, association, corporation, or any group or combination acting as a unit, and includes the plural as well as the singular unless the intent to give a more limited meaning is disclosed by the context in which it is used.

(i) "Retailer" means a person to whom a retail wine license has been issued.

(j) "Retail wine license" means a license issued by the director, authorizing a person to sell table wine and/or dessert wine at retail for consumption off the licensed premises.

(k) "Table wine" shall mean any alcoholic beverage containing not more than sixteen percent (16%) alcohol by volume obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar whether or not other ingredients are added.

(l) "Theater" means a room, place or outside structure for performances or readings of dramatic literature, plays or dramatic representations of an art form not in violation of any provision of Idaho law.

(m) "Vintner" means a person who manufactures, bottles, or sells table wine or dessert wine to importers for resale within this state other than a licensed "winery" as herein defined.

(n) "Wine" includes table wine and dessert wine, unless the context requires otherwise.

(o) "Wine by the drink license" means a license to sell table wine or dessert wine by the individual glass or opened bottle at retail, for consumption on the premises only.

(p) "Wine distributor's license" means a license issued by the director to a person authorizing such person to distribute table wine or dessert wine to retailers within the state of Idaho.

(q) "Wine importer's license" means a license issued by the director to a person authorizing such person to import table wine or dessert wine into the state of Idaho and to sell and distribute such wines to a distributor.

(r) "Winery" means a place, premises or establishment within the state of Idaho for the manufacture or bottling of table wine or dessert wine for sale. Two (2) or more wineries may use the same premises and the same equipment to manufacture their respective wines, to the extent permitted by federal law.

(s) “Winery license” means a license issued by the director authorizing a person to maintain a winery.

(2) All other words and phrases used in this chapter, the definitions of which are not herein given, shall be given their ordinary and commonly understood and accepted meanings. [1971, ch. 156, § 3, p. 760; am. 1973, ch. 144, § 1, p. 281; am. 1974, ch. 27, § 62, p. 811; am. 1984, ch. 221, § 1, p. 530; am. 1987, ch. 169, § 2, p. 330; am. 1994, ch. 266, § 1, p. 823; am. 2000, ch. 469, § 72, p. 1450; am. 2003, ch. 111, § 5, p. 348; am. 2003, ch. 119, § 1, p. 362; am. 2004, ch. 318, § 3, p. 892; am. 2008, ch. 181, § 1, p. 546; am. 2009, ch. 23, § 54, p. 53.]

STATUTORY NOTES

Amendments. — This section was amended by two 2003 acts, which conflicted by both adding new subsections designated (q). The conflict was resolved as described in the following compiler’s notes.

The 2003 amendment, by ch. 111, § 5, added subsections (r) and (s) and redesignated former subsection (p) as subsection (t).

The 2003 amendment, by ch. 119, § 1, inserted “table” preceding “wine” and added references to “dessert wine” throughout the section, added subsections (c) and (q), and redesignated the other subsections accordingly.

The 2008 amendment, by ch. 181, alphabetized the definitions and amended the terms to allow two or more wineries to join together to purchase and share the same premises and equipment so that they may share capital investment.

The 2009 amendment, by ch. 23, substi-

tuted “division” for “state liquor dispensary” in subsection (1)(g).

Federal References. — The federal alcohol administration act, referred to in paragraph (1)(a), is codified as 27 U.S.C.S. § 201 et seq.

Compiler’s Notes. — Section 1 of S.L. 1987, ch. 169 read: “SHORT TITLE. This act shall be known as the ‘Idaho Farm Winery Act’”.

Section 10 of S.L. 1973, ch. 144 read: “Those counties which have provided for the sale of wine as provided by chapter 13, title 23, Idaho Code, prior to the effective date of this act are deemed to have adopted wine by the drink as herein provided.”

Effective Dates. — Section 14 of S.L. 2004, ch. 318 declared an emergency retroactively to January 1, 2004 and approved March 24, 2004.

Section 2 of S.L. 2008, ch. 181 declared an emergency. Approved March 18, 2008.

23-1304. County option — Resolution of county commissioners — Order for election — Form of ballot — Effect of election or resolution. — There is hereby granted to the board of county commissioners of each of the several counties of this state the right and authority to permit the sale of table wine and/or dessert wine, as defined in this chapter, within the borders of the several counties of this state, which may be exercised in the following manner:

(a) the board of county commissioners of each county of this state may, by resolution regularly adopted, provide that retail sale of table wine and/or dessert wine, as defined in this chapter, shall be permitted within the county, and upon a certification of such resolution to the director, a retail wine license shall thereafter be issued for premises within such county so long as such resolution remains in effect; or

(b) the board of county commissioners of each of the several counties of this state may submit the question of permitting the sale of table wine and/or dessert wine at retail within the boundaries of the county to the electors of the county.

The board of county commissioners may make an order calling an election to be held, subject to the provisions of section 34-106, Idaho Code, within said county in the manner provided by law for holding elections for county officers. All laws of the state of Idaho relating to the holding of elections for county officers shall apply to the holdings of the election provided for in this section, except where specifically modified herein.

Such election may also be called upon written petition of registered electors equal in number to twenty percent (20%) of the registered, qualified electors of the county for the last general election under the following conditions:

(a) The petition for such an election shall be in substantially the following form:

RETAIL WINE SALE PETITION

To the Honorable County Commissioners of the County of , State of Idaho:

We, the undersigned citizens and registered, qualified electors of the County of , respectfully demand that the Board of County Commissioners submit the question of permitting the sale of table wine (and/or dessert wine) at retail within the boundaries of the County of ... to the electors of the county in the manner provided in section 23-1304, Idaho Code.

We, each for himself, say: I am a registered elector of the County of and my residence, post office address, county, election precinct and the date I signed this petition are correctly written after my name.

Name	Residence	Post Office	County	Election Precinct	Date
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(If in a city, street and number)

(Here follow twenty numbered lines for signatures)

(b) Before or at the time of beginning to circulate any petition for an election to determine sale of wine at retail, the person or persons, organization or organizations, under whose authority the petition is to be circulated, shall send or deliver to the county clerk a copy of such petition duly signed by at least twenty (20) electors eligible to sign such petition. The county clerk shall immediately examine the petition and specify the form and kind and size of paper on which the petition shall be printed and circulated for further signatures. All petitions and sheets for signatures shall be printed on a good quality bond or ledger paper, on pages eight and one-half (8 1/2) inches in width by thirteen (13) inches in length, with a margin of one and three-fourths (1 3/4) inches at the top for binding, and the sheets for signatures shall have numbered lines thereon from one (1) to twenty (20) for signatures. The petition shall be prepared in sections, with each section numbered consecutively. Each section of a petition must have a printed copy of the petition as the first page, and each section shall have attached to it not more than ten (10) sheets for signatures.

(c) The county clerk shall indicate in writing on the petition that he has approved it as to form and the date of such approval. Upon approval as to form, the county clerk shall inform the person or persons, organization or

organizations, under whose authority the petition is to be circulated, in writing, that the petition must be perfected with the required number of signatures within one hundred eighty (180) days following the date of approval as to form. Any petition that has not been perfected with the required number of certified signatures within the one hundred eighty (180) days allowed shall be declared null and void ab initio in its entirety, except for the extension allowed for in subsection (g) of this section.

(d) Each and every signature sheet of each petition containing signatures shall be verified on the face thereof in substantially the following form by the person who circulated said sheet of the petition, by his or her affidavit thereon, as a part thereof:

State of Idaho

County of

I,, swear, under penalty of perjury, that every person who signed this sheet of the foregoing petition signed his or her name thereto in my presence. I believe that each has stated his or her name and the accompanying required information on the signature sheet correctly, and that the person was eligible to sign this petition.

..... (Signature)

..... Post Office Address

Subscribed and sworn to before me this day of, 2

(Notary Seal)

.....

(Notary Public)

Residing at

(e) All petitions with attached signature sheets shall be presented to the county clerk on the same day and a cursory examination of the petitions shall be made by him. The cursory examination shall be made to determine whether the petitions apparently contain the necessary number of signatures. If the total number of signatures on the petitions is not sufficient to satisfy the number required by this law, all petitions with attached signature sheets shall be returned to the person or organization attempting to file them, and further signatures may be gathered. If the cursory examination of the signature sheets reveals:

(1) erasures on any signature;

(2) illegible or unidentifiable signatures; or

(3) signatures not properly identified by all the information required on the sheet,

the county clerk shall summarily reject such signature and such signatures shall not be counted. Each rejected signature shall be drawn through with ink and initialed by the county clerk or his deputy. If the total number of signatures not rejected is not sufficient to satisfy the number required by law, all petitions with attached signature sheets shall be returned to the person or organization attempting to file them, and further signatures may be gathered.

(f) All petitions presented to the county clerk found to apparently contain the necessary number of signatures, after the cursory examination provided for in subsection (e) of this section, shall be filed with the county clerk and

become public records of the county not to be returned. The county clerk shall examine each signature purported to be that of a registered elector and compare each such signature with the registration documents available to him. The county clerk shall summarily reject all signatures which are not the signatures of registered electors; and such rejected signatures shall not be counted. Each rejected signature shall be drawn through with ink and initialed by the clerk or his deputy. The county clerk may take not to exceed twenty (20) days after filing of the petition to complete his examination. The county clerk shall certify each signature found to comply with all of the requirements of this act by an appropriate mark following each signature. The county clerk shall total the number of certified signatures and certify the number thereof to the board of county commissioners.

(g) In the event that a petition filed with the county clerk does not contain the required number of certified signatures, the county clerk shall inform the person or organization under whose authority the petition was circulated that the petition is defective for lack of certified signatures, and specify the number of additional signatures required to make the petition valid. The petition must be perfected within sixty (60) days of the date that the clerk finds the petition defective for lack of certified signatures. If the petition is not perfected within the sixty (60) day period, the clerk shall declare the petition null and void ab initio in its entirety.

(h) In the event the county clerk shall certify to the board of county commissioners that a petition contains the required number of signatures of registered, qualified electors, said governing body shall forthwith make an order calling an election to be held, subject to the provisions of section 34-106, Idaho Code, within said county in the manner provided by law for holding elections for county officers.

In addition to the other requirements of law, the notice of election shall notify the electors of the issue to be voted upon at said election. The county recorder must furnish the ballots to be used in such election, which ballots must contain the following words:

“Sale of table wine at retail, Yes,”

“Sale of table wine at retail, No.”

and, if applicable:

“Sale of dessert wine at retail, Yes,”

“Sale of dessert wine at retail, No.”

and the elector in order to vote must mark an “X” opposite one (1) of the questions in the space provided therefor. Upon a canvass of the votes cast, the county recorder shall certify the result thereof to the director. If a majority of the votes cast are affirmative on the issue or issues presented, licenses shall be issued in said county as in this chapter provided. If a majority of the votes cast are in the negative on the issue or issues presented, then no license shall be issued in said county unless thereafter authorized by a subsequent election in said county which may be called in the manner provided for herein.

No resolution or election prohibiting the sale of table wine and/or dessert wine within the boundaries of any county of this state shall have an effective

date prior to the end of the then current calendar year if at the time of the adoption thereof there shall be any outstanding valid retail wine licenses in good standing for premises within such county.

The signer of any petition under this chapter may remove his own name from the petition by crossing out, obliterating, or otherwise defacing his own signature at any time prior to the time when the petition is filed. The signer of any such petition may have his name removed from the petition at any time after the petition has been filed, but prior to the time when an election has been ordered, by presenting or submitting to the county clerk a signed, acknowledged statement that the signer desires to have his name removed from the petition. The statement shall contain sufficient information to clearly identify the signer. The county clerk shall immediately strike the signer's name from the petition, and adjust the total of certified signatures on the petition accordingly. The statement shall be attached to, and become a part of, the petition.

A person is guilty of a felony punishable by imprisonment in the state penitentiary, not to exceed two (2) years, who:

- (a) Signs any name other than his own to any petition.
- (b) Knowingly signs his name more than once on the same petition.
- (c) Willfully or knowingly circulates, publishes or exhibits any false statement or representation concerning the contents, purport or effect of any petition for the purpose of obtaining any signature to any such petition, or for the purpose of persuading any person to sign any such petition.
- (d) Circulates or causes to circulate any petition, knowing the same to contain false, forged or fictitious names.
- (e) Makes any false affidavit concerning any petition or the signatures appended thereto.
- (f) Knowingly makes any false return, certification or affidavit concerning any petition or the signatures appended thereto.
- (g) Threatens any person with punitive or retaliatory action for the purpose of obtaining signatures or hindering or delaying the obtaining of signatures upon a petition. [1971, ch. 156, § 4, p. 760; am. 1973, ch. 142, § 1, p. 273; am. 1974, ch. 27, § 63, p. 811; am. 1995, ch. 118, § 13, p. 417; am. 2003, ch. 119, § 2, p. 362.]

STATUTORY NOTES

Compiler's Notes. — The term "this act" in subsection (f) refers to S.L. 1973, ch. 142, which is compiled as this section.

The words enclosed in parentheses so appeared in the law as enacted.

23-1305. Restrictions — Authority of division preserved. —

(a) Wine, as defined in this act, may be manufactured, imported into this state, possessed, distributed and sold in this state in the manner and under the conditions prescribed in this act and not otherwise.

(b) Nothing contained in this act shall prohibit the division from selling wine pursuant to the Idaho liquor act in any outlet of the division. [1971, ch. 156, § 5, p. 760; am. 2009, ch. 23, § 55, p. 53.]

STATUTORY NOTES

Cross References. — Idaho liquor act, § 23-101 and notes thereto. liquor dispensary” in the section heading and throughout the section.

Amendments. — The 2009 amendment, by ch. 23, substituted “division” for “state **Compiler’s Notes.** — For words “this act”, see Compiler’s Notes, § 23-1301.

23-1306. Licenses required — Application — Issuance or refusal.

— Before any person shall manufacture, import into this state, manufacture, bottle or broker for resale within this state, possess for resale, or distribute or sell wine within the state of Idaho, he shall apply to the director for a license to so do. The application form shall be prescribed and furnished by the director and require that the applicant therein show that he possesses all of the qualifications and none of the disqualifications of a licensee. A person may apply for and receive a license as both a distributor and importer, if otherwise qualified therefor, and shall pay the license fee required pursuant to this chapter for each license. A winery licensed under this chapter shall also be considered as holding, for the purposes of selling a product processed and bottled by or for that winery, a current retail wine license and wine by the drink license for the licensed premises and for use at functions and events identified in section 23-1338, Idaho Code, and a current wine distributor’s and importer’s license, without further application or fee. If the director is satisfied that the applicant possesses the qualifications and none of the disqualifications for such license, he shall issue a license for each classification applied for, subject to the restrictions of and upon the conditions specified in this chapter. The license or licenses issued shall be at all times prominently displayed in the place of business of the licensee. If the director determines that the applicant is not properly qualified, he shall refuse to issue a license and shall forthwith so notify the applicant and shall return to the applicant with such notification, three-fourths (3/4) of the license fee remitted with the application. A separate retail wine by the drink license, and wine distributor’s license shall be required for each premises. Provided, however, nothing herein shall prohibit a distributor or retailer or wine by the drink licensee from possessing licenses for more than one (1) premises. [1971, ch. 156, § 6, p. 760; am. 1973, ch. 144, § 2, p. 281; am. 1974, ch. 27, § 64, p. 811; am. 1984, ch. 221, § 2, p. 530; am. 1987, ch. 169, § 3, p. 330; am. 1993, ch. 333, § 1, p. 1232; am. 1994, ch. 244, § 1, p. 763; am. 2007, ch. 289, § 1, p. 821.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 289, in the fourth sentence, inserted “retail wine license and wine by the drink license for the licensed premises and for use at functions and events identified in section 23-1338, Idaho Code, and a current”; and in the fifth sentence, substituted “chapter” for “act”.

Effective Dates. — Section 4 of S.L. 2007, ch. 289 declared an emergency. Approved March 30, 2007.

23-1307. Qualifications for retail wine license, wine by the drink license, and distributor’s license. — (1) No retail wine license, wine by the drink license, or wine distributor’s license shall be issued to an applicant who at the time of making the application:

(a) If a corporation, has not qualified as required by law to do business in the state of Idaho;

(b) Has had a wine distributor's license, retail wine license, wine by the drink license, or wine importer's license, revoked by the director within three (3) years from the date of making such application;

(c) Has been convicted of a violation of the laws of this state or of the United States governing the sale of alcoholic beverages, wine, or beer, within three (3) years from the date of making such application;

(d) Has been convicted of a felony or been granted a withheld judgment following an adjudication of guilt of a felony within five (5) years from the date of making such application;

(e) If an individual or partnership, either the individual or at least one (1) of the partners of a partnership is not nineteen (19) years of age or older;

(f) If the application is for a retail wine license or wine by the drink license, the director finds that the applicant does not possess a retail beer license issued by the director, except that licensed wineries which do not sell wine by the drink shall not be required to possess a retail beer license as a prerequisite to a retail wine license.

(2) To determine qualification for a license, the director shall also cause an investigation which shall include a fingerprint-based criminal history check of the Idaho central criminal history database and the federal bureau of investigation criminal history database. Each person listed as an applicant on an initial application shall submit a full set of fingerprints and the fee to cover the cost of the criminal history background check for such person with the application. [1971, ch. 156, § 7, p. 760; am. 1973, ch. 144, § 3, p. 281; am. 1974, ch. 27, § 65, p. 811; am. 1987, ch. 169, § 4, p. 330; am. 1992, ch. 315, § 4, p. 937; am. 1994, ch. 14, § 7, p. 20; am. 2001, ch. 284, § 4, p. 1014.]

23-1307A. Wine by the drink establishment not allowed near churches or schools — Exceptions. — No wine by the drink license shall be issued for any place, where wine is sold or dispensed to be consumed on the premises, whether conducted for pleasure or profit, that is within three hundred (300) feet of any public school, church, or any other place of worship measured in a straight line to the nearest entrance to the licensed premises, except (that) with the approval of the governing body of the municipality; provided that this limitation shall not apply to any duly licensed premises that at the time of licensing did not come within the restricted area, but subsequent to licensing came therein. [I.C., § 23-1307A, as added by 1978, ch. 349, § 2, p. 913.]

STATUTORY NOTES

Compiler's Notes. — The word "that" was placed in parentheses by the compiler as surplusage.

23-1308. Qualifications for importer's license. — No wine importer's license shall be issued to an applicant who at the time of making the application:

(a) Has not executed an agreement in writing with the director that such importer and every person employed by it or acting as its agents other than distributors and retailers, will faithfully comply with and observe all the provisions of the laws of the state of Idaho relating to the importation, sale and distribution of wine and all rules and regulations adopted by the director pursuant to this act;

(b) Has had a wine distributor's license, retail wine license, wine by the drink license or wine importer's license, revoked by the director within three (3) years from the date of making such application;

(c) Has been convicted of a violation of the laws of this state or of the United States governing the sale of alcoholic beverages, wine, or beer, within three (3) years from the date of making such application;

(d) Has been convicted of a felony or been granted a withheld judgment following an adjudication of guilt of a felony within five (5) years from the date of making such application. [1971, ch. 156, § 8, p. 760; am. 1973, ch. 144, § 4, p. 281; am. 1974, ch. 27, § 66, p. 811.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-1301.

23-1308A. Qualifications for winery license. — (1) No winery license shall be issued to an applicant who at the time of making the application:

(a) Has not executed an agreement in writing with the director that such winery and every person employed by it or acting as its agents other than distributors and retailers, will faithfully comply with and observe all the provisions of the laws of the state of Idaho relating to the manufacturing, sale and distribution of wine and all rules adopted by the director pursuant to this act;

(b) Has had a winery license, a wine distributor's license, retail wine license, wine by the drink license or wine importer's license, revoked by the director within three (3) years from the date of making such application;

(c) Has been convicted of a violation of the laws of this state or of the United States governing the sale of alcoholic beverages, wine, or beer, within three (3) years from the date of making such application;

(d) Has been convicted of a felony or been granted a withheld judgment following an adjudication of guilt of a felony within five (5) years from the date of making such application.

(2) To determine qualification for a license, the director shall cause an investigation which shall include a fingerprint-based criminal history check of the Idaho central criminal history database and the federal bureau of investigation criminal history database. Each person listed as an applicant on an initial application shall submit a full set of fingerprints and the fee to cover the cost of the criminal history background check for such person with the application. [I.C., § 23-1308A, as added by 1984, ch. 221, § 3, p. 530;

am. 1987, ch. 169, § 5, p. 330; am. 1993, ch. 333, § 2, p. 1232; am. 2001, ch. 284, § 5, p. 1014.]

23-1309. Restrictions on importation and distribution. — No importer shall import wine into the state of Idaho for resale within the state to a destination other than the warehouse of a distributor within the state of Idaho. No distributor shall sell or distribute wine in this state except from stocks of wine which have been unloaded, stored and maintained in a warehouse or warehouses located within the state of Idaho and owned or used by such distributor in the conduct of his business as such. All records which a distributor is by law or rule required to maintain, shall be kept at his warehouse, or if such distributor shall have more than one (1) warehouse, then in the warehouse of such distributor which he shall designate as his principal warehouse within the state. Nothing in this section shall be deemed to affect the existing rights of any person who, on and prior to January 1, 1996, was licensed as a distributor by the state of Idaho. [1971, ch. 156, § 9, p. 760; am. 1996, ch. 329, § 2, p. 1122.]

23-1309A. Shipment and receipt of wine authorized — Labeling requirement. — (1) Notwithstanding any other provision of law, rule or regulation to the contrary, any holder of a winery license under section 23-1306, Idaho Code, or any person holding a license to manufacture wine in another state who obtains a wine direct shipper permit pursuant to this section may sell and ship up to twenty-four (24) nine-liter cases of wine annually directly to a resident of Idaho, who is at least twenty-one (21) years of age, for the resident's personal use and not for resale.

(2) Before sending any shipment to a resident of Idaho, the wine direct shipper permit holder must:

- (a) File an application with the director;
- (b) Pay a fifty dollar (\$50.00) annual registration fee if the winery is not currently licensed by the director;
- (c) Provide the director its Idaho winery license number or a true copy of its current alcoholic beverage license issued by another state;
- (d) Obtain from the director a wine direct shipper permit;
- (e) Register with the state tax commission for the payment of sales and use taxes and excise taxes on wine sold to residents of Idaho under the wine direct shipper permit.

(3) A wine direct shipper permit authorizes the permit holder to do all of the following:

- (a) Sell and ship not more than twenty-four (24) nine-liter cases of wine annually to any person twenty-one (21) years of age or older for his or her personal use and not for resale;
- (b) Ship wine directly to a resident in this state only in compliance with subsections (8) and (9) of this section;
- (c) Report to the director, no later than January 31 of each year, the total amount of wine shipped during the preceding calendar year under the wine direct shipper permit;
- (d) If the permit holder is located outside this state, pay to the state tax commission all sales and use taxes, and excise taxes on sales to residents

of Idaho under the wine direct shipper permit. For excise tax purposes, all wine sold pursuant to a direct shipper permit shall be deemed to be wine sold in this state;

(e) Permit the director and the state tax commission to perform an audit of the wine direct shipper permit holder's records upon request;

(f) Be deemed to have consented to the jurisdiction of the alcohol beverage control division [bureau] of the Idaho state police, or any other state agency and the Idaho courts concerning enforcement of this section and any related laws, rules or regulations.

(4) A wine direct shipper permit holder located outside the state may annually renew its permit with the director by paying a twenty-five dollar (\$25.00) renewal fee and providing the director a true copy of its current alcoholic beverage license issued in another state. A wine direct shipper permit holder located in Idaho shall renew its wine direct shipper permit in conjunction with its license to manufacture wine. All registration fees and renewal fees shall be shared equally by the state police and the state tax commission.

(5) The director may enforce the requirements of this section by administrative proceedings or suspend or revoke a wine direct shipper permit, and the director may accept payment of an offer in compromise in lieu of suspension, such payments to be determined by rule promulgated by the director.

(6) Sales and shipments of wine directly to consumers in Idaho from wine manufacturers in Idaho or in another state who do not possess a current wine direct shipper permit are prohibited. Any person who knowingly makes such a shipment is guilty of a misdemeanor.

(7) A licensee who holds a license for the retail sale of wine for consumption off the licensed premises may ship not more than two (2) cases of wine, containing not more than nine (9) liters per case, per shipment, for personal use and not for resale, directly to a resident of another state if the state to which the wine is sent allows residents of this state to receive wine sent from that state without payment of additional state tax, fees or charges. The sale shall be considered to have occurred in this state.

(8) The shipping container of any wine shipped under this section must be clearly labeled to indicate that the container contains alcoholic beverages and cannot be delivered to a person who is not at least twenty-one (21) years of age.

(9) For wine shipped under this section to an Idaho resident, the delivery person shall:

(a) Have the person who receives the wine shipment sign for it; and

(b) Not make deliveries to anyone who is under twenty-one (21) years of age or to anyone who is visibly intoxicated; and

(c) Keep the signature record for one (1) year.

(10) Sales authorized under this section are sales made by a retailer who is not authorized to sell at wholesale or sales by a winery of wine produced or bottled by the winery.

(11) The director and the state tax commission may promulgate rules to effectuate the purposes of this section and are authorized to exchange necessary information to implement the provisions of this section. [I.C., § 23-1309A, as added by 1992, ch. 236, § 1, p. 704; am. 2006, ch. 29, § 1, p. 89.]

STATUTORY NOTES

Cross References. — Punishment for misdemeanor when otherwise not provided, § 18-113.

State tax commission, § 63-101.

Amendments. — The 2006 amendment, by ch. 29, deleted “Reciprocal interstate” at the beginning of the section heading; deleted former subsection (1) which read: “Any resident of this state who is at least twenty-one (21) years of age is entitled to receive not more than two (2) cases of wine per month for personal use, containing not more than nine (9) liters per case, from another state without payment of state tax, fees or charges if the state from which the wine is sent allows its residents to receive wine from this state without imposition of state tax, fees or charges. For tax purposes, receipt of a shipment into this state under this subsection shall not be

considered to constitute a sale in this state. No person who transports wine pursuant to this subsection shall deliver more than two (2) cases of wine to the same address at one (1) time. No person who receives wine pursuant to this subsection shall resell any of the wine”; added present subsections (1) to (6); redesignated former subsections (2) to (5) as present subsections (7) to (10); substituted “shipped” for “sent into or out of this state” in present subsection (8); substituted “wine shipped under this section to an Idaho resident” for “the purposes of out-of-state shipments” in the introductory paragraph of present subsection (9); and added subsection (11).

Compiler’s Notes. — The bracketed insertion in paragraph (3)(f) was added by the compiler to correct the name of the referenced agency.

23-1310. Storage or purchase by distributor — From whom purchased. — No distributor may store or purchase wine for purposes of storage or resale unless said wine has been received from persons holding a valid wine importer’s license, a valid wine distributor’s license, or a valid winery license. [1971, ch. 156, § 10, p. 760; am. 1984, ch. 221, § 4, p. 530.]

23-1311. Sales by distributors — Restrictions. — No distributor may sell any wine produced, manufactured, imported, or bought by such distributor, for use within this state, except to the holder of a valid retail wine license or wine by the drink license, or valid wine distributor’s license or to the division. Provided however, any distributor may sell any wine produced, manufactured, imported, or bought by such distributor, for use within this state, to a bona fide employee of such distributor. No distributor shall permit, for a consideration, wine to be consumed upon the premises of the distributor. [1971, ch. 156, § 11, p. 760; am. 1973, ch. 144, § 5, p. 281; am. 1988, ch. 164, § 1, p. 295; am. 1991, ch. 137, § 7, p. 320; am. 2009, ch. 23, § 56, p. 53.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 23, substituted “division” for “state liquor dispensary” in the first sentence.

23-1312. By the drink liquor retailers may purchase from distributors. — Any law to the contrary notwithstanding, including but not limited to section 23-914, Idaho Code, the holder of a license for the retail sale of liquor by the drink as defined in chapter 9, title 23, Idaho Code, is hereby authorized to purchase wine from persons holding valid wine distributor’s licenses. [1971, ch. 156, § 12, p. 760.]

23-1313. Purchases by retailers. — No retailer shall purchase or receive wine for resale except from a distributor. Provided, however, that a

retailer wholly owned and operated by a licensed winery, which retails exclusively the product of that winery, may receive wine for resale from that winery. [1971, ch. 156, § 13, p. 760; am. 1984, ch. 221, § 5, p. 530.]

23-1314. Records of wineries, importers and distributors — Contents — Reports — Contents — Inspection of records, inventory, and property. — Every winery, distributor and importer shall have, and notify the director, of a place of business within the state of Idaho where such licensee will and shall keep a record of his or its imports into, and sales of wine within, the state, including the date, quantity, from whom purchased for import, the carrier or other person or means by whom or which transported for import, and the name and address of the purchaser, and shall so keep such record of each such sale or import for a period of four (4) years thereafter. Such licensee shall, on or before the fifteenth day of each month, make a return to the director of the amount of wine sold in, and imported by him into, the state of Idaho for the preceding month, which shall be upon forms furnished by the director. The director may require such additional information to be included in such returns as shall assist him in determining whether or not such licensee is complying with this act and whether or not all taxes and fees provided for by this act are being fully paid. The director shall have the right at any time to make an examination of each winery, distributor's and importer's books, records and premises, and such other matters as may assist him in verifying the accuracy of such returns, and retain in his office for not less than two (2) years, a report thereof. An application for, and acceptance of a license by a winery, distributor, importer or retailer shall constitute consent to, and be authority for, entry by the director or his authorized agents, upon any premises related to the licensee's business, or wherein are, or should be, kept, any of the licensee's books, records, supplies or other property related to said business, and to make the inventory, check and investigations aforesaid with relation to said licensee or any other licensee. [1971, ch. 156, § 14, p. 760; am. 1974, ch. 27, § 67, p. 811; am. 1984, ch. 105, § 2, p. 244; am. 1984, ch. 221, § 6, p. 530; am. 1999, ch. 129, § 2, p. 373; am. 2000, ch. 333, § 2, p. 1123.]

STATUTORY NOTES

Amendments. — This section was amended by two 1984 acts which appear to be compatible and have been compiled together.

The 1984 amendment, by ch. 105, § 1, in the first sentence substituted "four (4) years" for "eighteen (18) months"; in the second sentence deleted "(15th)" following "fifteenth"; and in the fourth sentence deleted "and it shall be his duty not less than once in each calendar year," following "at any time".

The 1984 amendment, by ch. 105, § 1, in the first sentence substituted "four (4) years" for "eighteen (18) months"; in the second sentence deleted "(15th)" following "fifteenth"; and in the fourth sentence deleted "and it shall be his duty not less than once in each calendar year," following "at any time".

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-1301.

23-1315. License fees — County retail license fees — County license required for retailers. — (a) Each importer shall pay to the state of Idaho an annual license fee of three hundred dollars (\$300).

(b) Each distributor shall pay to the state of Idaho an annual license fee of three hundred dollars (\$300) for each separate warehouse used for the purpose of or in connection with the sale or distribution of wine within this state.

(c) Each winery shall pay to the state an annual license fee of three hundred dollars (\$300).

(d) Each retailer and wine by-the-drink licensee shall pay to the state of Idaho an annual license fee of one hundred dollars (\$100) for each premises for which a license is issued for the sale of wine.

(e) In addition to the fee required by subsection (d) of this section, each retailer and wine-by-the drink [wine-by-the-drink] licensee shall pay an annual license fee of not to exceed one hundred dollars (\$100) to the county in which the licensed premises are located. If the licensed premises are located within the incorporated limits of a city, the licensee shall pay an annual license fee of not to exceed two hundred dollars (\$200) to such city. Each city and county within this state are hereby authorized and empowered to determine the license fees to be paid by each retailer and wine by-the-drink [wine-by-the-drink] licensee licensed pursuant to the terms and conditions of this act. No wine license issued by the commissioner [director] shall authorize the sale of wine at retail unless such person possesses a county and city license as may be required by the governing board thereof. [1971, ch. 156, § 15, p. 760; am. 1973, ch. 144, § 6, p. 281; am. 1981, ch. 237, § 2, p. 477; am. 1984, ch. 221, § 7, p. 530.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions in subsection (e) were added by the compiler.

For words "this act", see Compiler's Notes, § 23-1301.

23-1316. Expiration and renewal of licenses. — All licenses issued pursuant to the provisions of this chapter shall expire at 1:00 o'clock a.m. on the first day of the renewal month which shall be determined by the director by administrative rule and shall be subject to annual renewal upon proper application. The director will determine the renewal month by county based on the number of current licenses within each county, distributing renewals throughout the licensing year. The director may adjust the renewal month to accommodate population increases. Each licensee will be issued a temporary license to operate until their renewal month has been determined. Thereafter, renewals will occur annually on their renewal month. Renewal applications for licenses accompanied by the required fee must be filed with the director on or before the first day of the designated renewal month. Any licensee holding a valid license who fails to file an application for renewal of the current license on or before the first day of the designated renewal month shall have a grace period of an additional thirty-one (31) days in which to file an application for renewal of the license. The licensee, however, shall not be permitted to engage in any activity authorized by the license during the thirty-one (31) day extended time period unless and until the license is renewed. Renewal of such licenses shall be on forms prescribed

and furnished by the issuing authority. The renewal form shall be submitted, together with the required license fees, and an affidavit verifying that the information contained in the original application is unchanged, or if there are material changes, indicating such changes. [1971, ch. 156, § 16, p. 760; am. 2001, ch. 30, § 3, p. 43.]

23-1317. Transfer of licenses — Fee — Application for approval. —

(a) No winery license, wine distributor's license, wine by-the-drink license [wine-by-the-drink], or retail wine license may be transferred to another person, including an executor, administrator, or trustee in bankruptcy of the estate of the licensee, unless the transferee shall first have obtained the approval of the director to such transfer upon application containing the substantially same information required of an applicant for a winery license, wine distributor's license or retail wine license, as the case may be. If the transferee possesses all of the qualifications and none of the disqualifications for such license, the director shall approve the transfer by issuing a license to the transferee. The fee for each transfer of a winery license, wine distributor's license, wine-by-the-drink license, or a retail wine license shall be twenty dollars (\$20.00), which fee shall accompany the application for transfer.

(b) Application to transfer a winery license, wine distributor's license, wine by-the-drink license [wine-by-the-drink], or retail wine license from one location to another shall be made to the director on forms prescribed and furnished by the director. The director shall approve any such transfer upon submission of the application and receipt by the director of a transfer fee of twenty dollars (\$20.00).

(c) The director, in his discretion, may deny the transfer of a license during the pendency [pendency] of any proceedings for suspension or revocation instituted pursuant to the provisions of this chapter. [1971, ch. 156, § 17, p. 760; am. 1973, ch. 144, § 7, p. 281; am. 1974, ch. 27, § 68, p. 811; am. 1984, ch. 221, § 8, p. 530; am. 1991, ch. 28, § 3, p. 54.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions were added by the compiler.

23-1318. County and city regulatory ordinances authorized. —

The governing board of any county or city within this state is hereby authorized and empowered to adopt such ordinances and resolutions as may be deemed necessary by the governing board of said county or city in the interests of public health and welfare or for the orderly, moral and responsible conduct of the business of selling and distributing wine within the boundaries of such city or county, including but not limited to hours, days, places and conditions of sale and advertising practices. [1971, ch. 156, § 18, p. 760.]

23-1319. Excise tax — Sales included — Refund for export sales — Refund for breakage or spoilage — Distribution of revenue. —
Upon all wines sold by a distributor or winery to a retailer or consumer and

upon all wines sold and shipped directly to Idaho state residents by an out-of-state wine manufacturer holding a wine direct shipper permit under section 23-1309A, Idaho Code, for use within the state of Idaho pursuant to this chapter there is hereby imposed an excise tax of forty-five cents (45¢) per gallon. Sales of wine by a distributor or winery for the purpose of and resulting in export of wine from this state for resale outside this state shall be exempt from the taxes on wine imposed by this chapter.

(a) Every sale of wine by a distributor to a retailer shall constitute a sale of wine for resale or consumption in this state, whether the sale is made within or without this state, and the distributor shall be liable for the payment of taxes. In every transfer of wine by a licensed winery to its licensed retail outlet, the winery shall be liable for payment of taxes.

(b) When wine has been destroyed by breakage or has spoiled or otherwise become unfit for beverage purposes prior to payment of taxes on it, the distributor, upon satisfactory proof of destruction or spoilage, shall be entitled to deduct from existing inventories, subject to tax, the amount of wine so destroyed or spoiled.

(c) If the tax commission determines that any amount due under this chapter has been paid more than once or has been erroneously or illegally collected or computed, the commission shall set forth that fact in its records and the excess amount paid or collected may be credited on any amount then due and payable to the commission from that person and any balance refunded to the person by whom it was paid or to his successors, administrators or executors. The commission is authorized and the state board of tax appeals is authorized to order the commission in proper cases to credit or refund such amounts whether or not the payments have been made under protest and certify the refund to the state board of examiners.

(d) No credit or refund shall be allowed or made after three (3) years from the time the payment was made, unless before the expiration of that period a claim is filed by the taxpayer. The three (3) year period allowed by this subsection for making refunds or credit claims shall not apply in cases where the tax commission asserts a deficiency of tax imposed by law, and taxpayers desiring to appeal or otherwise seek a refund of amounts paid in obedience to deficiencies must do so within the time limits elsewhere prescribed by law.

(e) All revenue received pursuant to this chapter shall be distributed as follows:

(1) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims as authorized in subsection (c) of this section and those moneys are continuously appropriated.

(2) The balance remaining after distributing the amount in paragraph (1) of this subsection shall be distributed as follows:

(i) Twelve percent (12%) shall be distributed to the substance abuse treatment fund which is created in section 23-408, Idaho Code;

(ii) Five percent (5%) shall be distributed to the Idaho grape growers and wine producers commission account; and

(iii) The remainder shall be distributed to the general account.

(f) Any person who is not a distributor or winery but who makes, whether as principal, agent or broker, any sales of wine not otherwise taxed under

this section and not exempt from such tax, shall be liable for payment of taxes imposed by this section. This subsection shall not impose tax on wine sold pursuant to section 23-1336, Idaho Code. [1971, ch. 156, § 19, p. 760; am. 1980, ch. 239, § 5, p. 554; am. 1980, ch. 391, § 2, p. 993; am. 1984, ch. 105, § 1, p. 244; am. 1984, ch. 221, § 9, p. 530; am. 1984, ch. 283, § 1, p. 656; am. 1986, ch. 73, § 5, p. 201; am. 1988, ch. 156, § 1, p. 282; am. 1990, ch. 18, § 1, p. 30; am. 1994, ch. 243, § 1, p. 762; am. 2006, ch. 29, § 2, p. 89; am. 2007, ch. 141, § 6, p. 407.]

STATUTORY NOTES

Cross References. — Board of tax appeals, § 63-3801 et seq.

Idaho grape growers and wine producers commission account, § 54-3607.

State board of examiners, § 67-2001 et seq.

State refund account, § 63-3067.

State tax commission, § 63-101.

Amendments. — The 2006 amendment, by ch. 29, inserted “and upon all wines sold and shipped directly to Idaho state residents

by an out-of-state wine manufacturer holding a wine direct shipper permit under section 23-1309A, Idaho Code” and substituted “this chapter” for “this act” in the first sentence of the introductory paragraph.

The 2007 amendment, by ch. 141, substituted “substance abuse treatment fund which is created in section 23-408, Idaho Code” for “alcoholism treatment account” in subsection (e)(2)(i).

23-1320. Security for tax. — The state tax commission, whenever it deems it necessary to insure compliance with this act, may require any person subject to this act to place with it such security as it may determine. The amount of the necessary security shall be fixed by the state tax commission but, except as provided hereafter, shall not be greater than three (3) times the estimated average monthly amount payable by such persons pursuant to this act. In the case of persons habitually delinquent in their obligations under this act, the amount of the security shall not be greater than five (5) times the estimated average monthly amount payable by such persons pursuant to this act. The amount of the security may be increased or decreased by the state tax commission at any time, subject to the limitations set forth herein.

The state tax commission may sell the security at public auction or, in the case of security in the form of bearer bonds issued by the United States or the state of Idaho which have a prevailing market price, at a private sale at a price not lower than the prevailing market price if it becomes necessary to make such sale in order to recover any tax, interest or penalties due on any amount required to be collected. Notice of the sale must be given to the person who deposited the security at least ten (10) days before the sale. Such notice may be given personally or by mail addressed to the person at the address furnished to the state tax commission and as it appears in the records of the state tax commission. Upon such sale, any surplus above the amounts due shall be returned to the person who placed the security. [I.C., § 23-1320, as added by 1988, ch. 182, § 4, p. 319.]

STATUTORY NOTES

Cross References. — State tax commission, § 63-101.

Prior Laws. — Former § 23-1320, which

comprised 1971, ch. 156, § 20, p. 760, was repealed by S.L. 1988, ch. 182, § 3.

Compiler's Notes. — The words “this act”

mean S.L. 1988, ch. 182, which is compiled as §§ 23-1049 and 23-1320. Probably, the reference should be to “this chapter”, being chapter 13, title 23, Idaho Code.

23-1321. Penalty and interest on excise tax — Waiver for justifiable delay in payment. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — This section, which comprised 1971, ch. 156, § 21, p. 760; am. 1984, ch. 105, § 3, p. 244, was repealed by S.L. 1986, ch. 176, § 1.

23-1322. Monthly reports of sales — Payment of excise tax with report. — Each person liable for the payment of taxes on wine as provided for in section 23-1319, Idaho Code, shall, on or before the fifteenth day of each month, or for such other period as the state tax commission may prescribe by rule, file a written report with the state tax commission showing all sales of wine for resale or consumption in this state made by such person during the calendar month or other period immediately preceding. Taxes payable with respect to such sale shall be paid by the person liable therefor at the time such report is filed. [1971, ch. 156, § 22, p. 760; am. 2009, ch. 4, § 2, p. 6.]

STATUTORY NOTES

Cross References. — State tax commission, § 63-101.

Amendments. — The 2009 amendment, by ch. 4, in the first sentence, inserted “or for such other period as the state tax commission may prescribe by rule” and “or other period.”

23-1322A. Collection and enforcement. — The collection and enforcement procedures provided by the Idaho income tax act, sections 63-3042 through 63-3065A, inclusive, and sections 63-3068 and 63-3075, Idaho Code, shall apply and be available to the state tax commission for enforcement and collection of the tax imposed by this chapter, and said sections shall, for this purpose, be considered part of this act. Any reference to taxable year in the income tax act shall, for the purposes of this act, be considered a taxable period. [I.C., § 23-1322A, as added by 1980, ch. 239, § 6, p. 554; am. 1984, ch. 105, § 4, p. 244; am. 2007, ch. 10, § 10, p. 10.]

STATUTORY NOTES

Cross References. — State tax commission, § 63-101.

Amendments. — The 2007 amendment, by ch. 10, substituted “63-3075” for “63-3070.”

Compiler’s Notes. — The term “this act” at the end of the first sentence refers to S.L. 1980, ch. 239, which is codified as §§ 23-1008, 23-1048, 23-1050A, 23-1319, and this section. The term “this act” in the second sentence refers to S.L. 1984, ch. 105, which is codified as §§ 23-1314, 23-1319, and this section. Probably, both references should be to “this chapter”, being chapter 13, title 23, Idaho Code.

23-1323. Rules and regulations concerning excise tax — Power of tax commission. — The state tax commission shall be, and it is hereby authorized to adopt and promulgate such rules and regulations as it may be necessary to assure payment of taxes on wine, including but not limited to,

rules and regulations prescribing the form and content of monthly reports required; requiring the persons liable for payment of taxes on wine to show on such monthly reports information concerning their inventories, purchases, sales and shipments of wine, requiring monthly informational reports from distributors concerning their inventories, purchases, sales and shipments of wine; requiring reports from carriers, both public and private, concerning deliveries of wine made in this state by such carriers, and shipments of wine made by such carriers out of this state; requiring distributors and persons liable for payment of taxes on wine to maintain complete and accurate books, records and accounts on transactions involving wine; and establishing grounds upon which delay in filing reports and paying taxes imposed upon wine may be considered justifiable and without fault on the part of the person liable therefor. [1971, ch. 156, § 23, p. 760.]

STATUTORY NOTES

Cross References. — State tax commission, § 63-101.

23-1324. Permits for salesmen — Fee. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which permits for wine salesmen, was repealed by comprised S.L. 1971, ch. 156, § 24, p. 760; S.L. 1979, ch. 145, § 2. am. 1974, ch. 27, § 69, p. 811, providing for

23-1325. Financial interest in or aid to retailers prohibited — Certain aid permitted. — (1) It shall be unlawful for any importer, distributor, vintner or winery, directly or indirectly, or through an affiliate, subsidiary, officer, director, agent or employee:

- (a) To have any financial interest in any licensed retailer's business, or to own or control any real property upon which a licensed retailer conducts his business, except that this subsection (1)(a) shall not apply to any winery, as defined in section 23-1303, Idaho Code, or to property that has been owned or controlled continuously for more than one (1) year prior to July 1, 1975; or
 - (b) To aid or assist any licensed retailer by giving such retailer, or any employee thereof, any discounts, premiums or rebates in connection with any sale of wine; or
 - (c) To aid or assist any retailer by furnishing, giving, renting, lending or selling any equipment, signs, supplies, wine menus or wine lists, services, or other thing of value which may be used in conducting the retailer's retail wine business, except as expressly permitted by this chapter; or
 - (d) To enter into any lease or other agreement with any retail licensee to control the product or products sold by such retailer; or
 - (e) To provide for any rental or other charge to be paid to or by the retailer for product display or advertising display space.
- (2) An importer, distributor, vintner or winery as an incident to merchandising in the ordinary course of business, and if available to all licensed

retailers without discrimination, may sell to a retailer equipment, supplies or clothing which may be used in conducting the retailer's retail wine business. A winery, vintner, importer or distributor may not sell such equipment or supplies at a price, or under terms, intended or designed to encourage or induce the retailer to use products of the seller to the exclusion of the products of other wineries, vintners, importers or distributors. In no event shall the sales price of such equipment or supplies be less than the reasonable value of such equipment or supplies.

(3) Notwithstanding the provisions of subsection (2) of this section, a vintner, winery, importer or distributor, as an incident to merchandising in the ordinary course of business, and if available to all retailers without discrimination, may lend, give, furnish or sell to a retailer, the following items:

- (a) Those services, equipment, brochures and recipes authorized under the provisions of sections 23-1325A and 23-1325B, Idaho Code;
- (b) Signs, posters, placards, designs, devices, decorations or graphic displays bearing advertising matter and for use in windows or elsewhere in the interior of a retail establishment. The importer, distributor, vintner or winery shall not directly or indirectly pay or credit the retailer for displaying such materials or for any expense incidental to their operation;
- (c) Newspaper cuts, mats or engraved blocks for use in retailer's advertisements;
- (d) Items such as sport schedules, posters, calendars, informational pamphlets, decals and other similar materials for display at the point of sale which bear brand advertising for wine prominently displayed thereon, and which items are intended for use by the retailer's customers off the licensed premises and which items are made available to the retailer's customers for such purpose;
- (e) Temporary signs or banners displaying a vintner's, winery's or distributor's name, trademark or label, which signs may be permitted to be temporarily displayed on the exterior portion of the retailer premises in connection with a special event, in accordance with such rules relating thereto as may be established by the director.

(4) A distributor may perform services incident to or in connection with the stocking, rotation and restocking of wine sold and delivered to such licensed retailer on or in such licensed retailer's storeroom, salesroom shelves or refrigerating units, including the marking or remarking of containers of such wine to indicate the selling price as established by the retailer and to the arranging, rearranging, or relocating of advertising displays referred to in this section. A distributor may, with the permission of the retailer and in accordance with space allocations directed by the retailer, set, remove, replace, reset or relocate all wine upon shelves of the retailer. Labor performed or schematics prepared by the distributor relating to conduct authorized pursuant to the provisions of this subsection (4) shall not constitute prohibited conduct.

(5) An importer, distributor, vintner or winery may furnish or give to a retailer authorized to sell wine for consumption on the licensed premises, for sampling purposes only, a container of wine, containing not more than

sixty-four (64) ounces, not currently being sold by the retailer, and which container is clearly marked "NOT FOR SALE—FOR SAMPLING PURPOSES ONLY."

(6) A licensed winery may aid or assist a licensed retail wine outlet which retails exclusively the wine product of that winery and which outlet is wholly owned and operated by that winery. Two (2) or more wineries may use the same location for their respective retail wine outlets provided each outlet holds a separate retail wine license or wine by the drink license.

(7) Every violation of the provisions of this section by an importer, distributor, vintner or winery in which a licensed retailer shall have actively participated shall constitute a violation on the part of such licensed retailer. [I.C., § 23-1325, as added by 1975, ch. 151, § 5, p. 383; am. 1976, ch. 34, § 2, p. 71; am. 1984, ch. 221, § 10, p. 530; am. 1991, ch. 159, § 2, p. 380; am. 1994, ch. 361, § 2, p. 1131; am. 2007, ch. 289, § 2, p. 821; am. 2008, ch. 180, § 1, p. 544.]

STATUTORY NOTES

Prior Laws. — Former § 23-1325, which comprised S.L. 1971, ch. 156, § 25, p. 760; am. 1974, ch. 27, § 70, p. 811, regarding acts prohibited to importers and distributors, was repealed by S.L. 1975, ch. 151, § 4.

Amendments. — The 2007 amendment, by ch. 289, added the last sentence in subsection (6).

The 2008 amendment, by ch. 180, in paragraph (1)(a), substituted "except that this

subsection (1)(a) shall not apply to any winery, as defined in section 23-1303, Idaho Code, or to property that has been owned or controlled" for "except such property as shall have been so owned or controlled."

Effective Dates. — Section 4 of S.L. 2007, ch. 289 declared an emergency. Approved March 30, 2007.

Section 2 of S.L. 2008, ch. 180 declared an emergency. Approved March 18, 2008.

23-1325A. Services permitted incident to stocking, rotation and restocking of wine. — For the purposes of section 23-1325(1)(e) [23-1325(4)], Idaho Code, a distributor may, with the permission of the retailer, and in accordance with space allocations directed by the retailer, set, remove, replace, reset or relocate all wine upon the shelves of the retailer. Labor performed or schematics prepared by the distributor relating to conduct authorized pursuant to the provisions of this section shall not constitute prohibited conduct or unlawful aid to a retailer. [I.C., § 23-1325A, as added by 1984, ch. 232, § 2, p. 560.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler.

Effective Dates. — Section 3 of S.L. 1984,

ch. 232 declared an emergency. Approved April 4, 1984.

23-1325B. Services permitted incident to wine dispensing systems — Certain advertising materials permitted. — (1) To the extent permitted by federal law and regulations adopted pursuant thereto, a distributor may furnish, install and perform repair services on wine dispensing systems on the premises of a retailer. The distributor shall collect from the retailer the reasonable value thereof, which value shall not be less than the cost of such system or service to the distributor. Dispensing

systems may include, but shall not be limited to, tapping devices, spigots, valves, hose, washers, couplings, clamps, air hose, vents, faucets and pumping devices and CO₂ regulators. A distributor may perform cleaning and sanitary services relating to the dispensing system without charge.

(2) Notwithstanding the provisions of section 23-1325, Idaho Code, a distributor may furnish to the retailer, without charge, recipes and brochures explaining wine and other products.

(3) Labor performed or equipment, brochures or recipes furnished pursuant to the provisions of this section shall not constitute prohibited conduct or unlawful aid to a retailer. [I.C., § 23-1325B, as added by 1990, ch. 406, § 1, p. 1132.]

23-1325C. Wine sample tasting requirements and limitations for events on retail wine license premises. — (1) Vintners, wineries and distributors may conduct or assist a retail wine licensee at a wine sample tasting on premises not licensed for the sale of wine by the individual glass or opened bottle for consumption on the premises or on the premises of the holder of a wine by the drink [wine-by-the-drink] license for the purpose of promoting their wine products to the public. The holder of a retail wine license or a wine by the drink [wine-by-the-drink] license may also conduct wine sample tasting events, with or without the assistance of a vintner, winery or distributor in accordance with this section.

(2) A retail wine licensee shall not be required to hold a wine by the drink license [wine-by-the-drink] for the purpose of conducting or permitting wine sample tasting events on the premises in accordance with this section unless a charge or other consideration is required of the customer by the retailer in exchange for such wine sample.

(3) Sample tasting events permitted pursuant to this section shall be conducted subject to all of the following requirements:

(a) Sample sizes. The size of each sample of wine shall not exceed one and one-half (1 1/2) ounces.

(b) Identified tasting area. The retail wine licensee who conducts tastings or who allows a vintner, winery or distributor to conduct tastings on the retail wine premises shall identify a specific tasting area or areas. Such area or areas shall be of a size and design such that the retail wine licensee and the persons conducting the tasting can observe and control persons in the area to ensure that no minors or visibly intoxicated persons possess or consume alcohol. Customers must remain in the tasting area or areas until they have finished consuming the sample. The retailer shall keep on file at the premises a floor plan identifying the tasting area or areas. If a retailer does not have an identified tasting area or areas, the director may require prior approval of an area or areas before the retailer conducts any more tastings or allows any more tastings to be conducted by the vintner, winery or distributor on the premises.

(c) Number of in-store tastings. Although there is no limit on the number of tastings a retailer may conduct without the assistance of a vintner, winery or distributor, the retailer shall not permit a vintner, winery or distributor to conduct, or assist in conducting, tastings on the premises of the same licensee more than eight (8) times per calendar year.

(d) Vintner, winery or distributor conducted tastings. A vintner, winery or distributor may hold tastings on consecutive days on one (1) retail premises, provided the tastings shall not exceed two (2) consecutive days. Tastings shall be conducted at least four (4) weeks apart. If a vintner, winery or distributor holds tastings on two (2) consecutive days, they shall not hold another tasting on those retail premises for at least four (4) weeks.

(e) Server requirements. Persons serving or pouring wine at wine tastings on premises for which a wine by the drink [wine-by-the-drink] license has not been issued must be at least twenty-one (21) years of age.

(4) Vintner, winery or distributor conducted sample tastings. A vintner, winery or distributor may conduct wine sample tastings on premises licensed for the sale of wine for products produced or sold by the vintner, winery or distributor. The vintner, winery or distributor conducting the wine sample tasting shall, in addition to compliance with other requirements of this section, comply with all of the following requirements:

(a) Provide the product to be tasted, and remove any remaining product at the end of the tasting.

(b) Provide or pay for a person to serve the wine. The server must be an employee or agent of the vintner, winery or distributor and shall not be an employee or agent of a retailer. The vintner, winery or distributor shall not compensate any employee or agent of the retail licensee to participate in the tasting.

(c) The vintner, winery or distributor shall keep a record of each tasting it conducts, including the date and location of each event and the products served.

(5) Retailer conducted wine sample tastings. Retail wine licensees and wine by the drink [wine-by-the-drink] licensees may conduct wine sample tastings on their licensed premises and may:

(a) Accept assistance from a vintner, winery or distributor if:

(i) The only assistance provided is an employee to provide information or education relating to the product being sampled;

(ii) The retailer pays for the wine; and

(iii) The retailer is responsible for any advertising.

(b) Conduct an unlimited number of wine sample tastings on the premises if there is no vintner, winery or distributor providing assistance for the event. The retailer may advertise such events.

(6) Notwithstanding any other provision of law, participation by a vintner, winery or distributor in a wine sample tasting event, if expressly authorized by this section, shall not constitute prohibited conduct or unlawful aid to a retailer. [I.C., § 23-1325C, as added by 2004, ch. 267, § 1, p. 749.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions were added by the compiler.

23-1326. Credit sales to retailers prohibited. — No sale or delivery of wine shall be made to any retailer, except for cash paid at the time of or prior to delivery thereof, and in no event shall any distributor extend any credit on account of such wine to a retailer, nor shall any retailer accept or receive delivery of such wine except when payment therefor is made in cash at the time of or prior to delivery thereof. The acceptance of a first party check from a retailer by a distributor, or the use of electronic funds transfer or debit card by a licensed retailer, shall not be deemed an extension of or acceptance of credit hereunder. Any extension or acceptance of credit in violation of this section shall constitute the giving and receiving of aid or assistance to or by a licensed retailer prohibited by the provisions of section 23-1325, Idaho Code. [1971, ch. 156, § 26, p. 760; am. 1999, ch. 206, § 3, p. 553.]

23-1327. Sale of wine in original container and size of containers. — No distributor shall purchase, receive, or sell any wine except in the original container as prepared for the market by the importer or manufacturer. No importer or distributor shall, without permission of the director, adopt or use any container for wine that will contain in excess of one (1) gallon of wine. [1971, ch. 156, § 27, p. 760; am. 1974, ch. 27, § 71, p. 811; am. 2005, ch. 32, § 1, p. 147.]

23-1328. Retailer's name on labels prohibited — Discrimination among retailers prohibited. — No label on a wine container shall be used or placed thereon which indicates that a retailer is the producer or the bottler thereof or which contains the name of a retailer in any manner, except in the case of wineries licensed under this chapter, in which case such winery may sell a product processed and bottled by or for that winery upon satisfaction of all terms and conditions of this chapter relating to licensure for retail sale of wine. No distributor shall restrict the sale of wine for which the distributor has filed a price schedule in accordance with the provisions of this act to one retailer or to retail premises under common ownership or associated together in, by, or through a buying organization or agency which represents a common identity to the public; nor shall such distributor refuse to sell or distribute wine to a retailer on terms and conditions different from those terms and conditions upon which said distributor sells or distributes wine to other retailers. [1971, ch. 156, § 28, p. 760; am. 1984, ch. 221, § 11, p. 530; am. 1987, ch. 169, § 6, p. 330; am. 1993, ch. 333, § 3, p. 1232.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-1301.

23-1328A. Prohibition of certain trade practices between vintners, wineries, importers or dealers and distributors. — (1) It shall be unlawful for any vintners, winery, importer or dealer, directly or indirectly, or through an affiliate, subsidiary, officer, director, agent or employee:

- (a) To require, by agreement or otherwise, that any distributors engaged in the sale or distribution of wine in the state of Idaho purchase any such wine or other distributed products from such person to the exclusion in whole or in part of wine or other products made or imported by other vintners, wineries, importers or dealers;
 - (b) To induce, by any means, any distributor engaged in the sale or distribution of wine to purchase from or distribute the wine or other products of any vintner, winery, importer or dealer to the exclusion of the wine or products of other vintners, wineries, importers or dealers by any means, including, but not limited to the vintner's, winery's, importer's or dealer's acquisition of any interest in the distributor's license, or by acquiring any interest in the real or personal property owned, occupied, or used by the distributor;
 - (c) To discriminate in price, allowance, rebate, refund, commission, discount, or service between a distributor purchasing wine or a distributor purchasing other products;
 - (d) To threaten any distributor with any discrimination prohibited under subsection (1)(c) of this section, with the purpose or effect of changing or maintaining resale prices of the vintner, winery, importer or dealer;
 - (e) To impose conditions or restrictions on a distributor not generally imposed on other distributors; or
 - (f) To cause a termination, cancellation, nonrenewal or substantial change in competitive circumstances in the relationship with the distributor without providing at least ninety (90) days' written notice of the termination, cancellation, nonrenewal or substantial change in competitive circumstances. The notice shall state all the reasons for termination, cancellation, nonrenewal or substantial change in competitive circumstances and shall provide that the distributor has ninety (90) days from the date of receipt by said distributor of the vintner's, winery's, importer's or dealer's notice in which to rectify any claimed deficiency. If the deficiency is rectified within ninety (90) days the notice shall be void. The notice provisions of this section shall not apply if the reason for termination, cancellation or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy. If the reason for termination, cancellation, nonrenewal or substantial change in competitive circumstances is nonpayment of sums due for the purchase of product, the distributor shall be entitled to written notice of such default, and shall have twenty (20) days in which to remedy such default from the date of delivery or posting of such notice.
- (2) Nothing in this section shall be deemed to prohibit vintners, wineries, importers or dealers from selecting their own customers in bona fide transactions not in restraint of trade. [I.C., § 23-1328A, as added by 1979, ch. 301, § 1, p. 820; am. 1984, ch. 221, § 12, p. 530.]

STATUTORY NOTES

Compiler's Notes. — Section 2 of S.L. 1979, ch. 301 read: "The provisions of this act are hereby declared to be severable and if any

provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declara-

tion shall not affect the validity of remaining portions of this act."

23-1329. Schedules of prices — Filing by importers and distributors — Modification or withdrawal. — Each importer and distributor shall file with the director a written schedule of prices to be charged by such person for wine imported into or sold within this state for resale therein. Such schedule of prices shall be uniform for buyers in the same trade area within this state, and shall set forth the following:

- (a) All brands and types of products offered for sale;
- (b) The delivered sale price thereof in the several trade areas of the state; and
- (c) Any allowance granted for returned containers.

Such schedule of prices so filed may be changed or modified from time to time by filing with the director a new schedule of prices, not less than ten (10) days prior to the last day of the filing calendar month, becoming effective on the first day of the succeeding calendar month. Upon the filing of said new prices, the director shall give notice thereof to all importers and distributors. Such schedule of prices so filed may not be withdrawn prior to its effective date, and upon becoming effective shall remain in effect as follows:

- (i) an increase in prices, for a minimum period of thirty (30) days;
- (ii) a reduction in prices for a minimum period of six (6) months.

Upon the filing of the original schedule of prices, and after the effective date of any schedule of prices amendatory thereto, all prices therein stated shall be strictly adhered to. Amendatory schedules shall recite the information required in the above subsections (a), (b) and (c). [1971, ch. 156, § 29, p. 760; am. 1974, ch. 27, § 72, p. 811; am. 1975, ch. 151, § 6, p. 383.]

23-1330. Rules and regulations by director. — For the purpose of the administration of this act, the director shall make, promulgate, and publish such rules and regulations as the director may deem necessary for carrying out the provisions of this act and for the orderly and efficient administration hereof, and except as may be limited or prohibited by law and the provisions of this act, such rules and regulations so made and promulgated shall have the force of statute. All rules and regulations adopted pursuant to the terms of this act shall be adopted in accordance with the [and] subject to the provisions of chapter 52, title 67, Idaho Code. [1971, ch. 156, § 30, p. 760; am. 1974, ch. 27, § 73, p. 811.]

STATUTORY NOTES

Compiler's Notes. — The bracketed word "and" was inserted by the compiler.

For words "this act", see Compiler's Notes, § 23-1301.

23-1331. Suspension, revocation, and refusal to renew licenses and permits — Monetary penalty. — (1) The director may suspend, revoke, or refuse to renew a retail wine license, wine by the drink [wine-by-the-drink] license, wine distributor's license, wine importer's li-

cense, winery license or vintner's license issued pursuant to the terms of this chapter for any violation of or failure to comply with the provisions of this chapter or rules and regulations promulgated by the director or the state tax commission pursuant to the terms and conditions of this chapter. Procedures for the suspension, revocation or refusal to grant or renew licenses issued under this chapter shall be in accordance with the provisions of chapter 52, title 67, Idaho Code.

(2) When the director determines to suspend such license, the affected licensee may petition the director prior to the effective date of the suspension requesting that a monetary payment be allowed in lieu of the license suspension. If the director determines such payment to be consistent with the purpose of the laws of the state of Idaho and is in the public interest, he shall establish a monetary payment in an amount not to exceed five thousand dollars (\$5,000). The licensee may reject the payment amount determined by the director, and instead be subject to the suspension provisions of subsection (1) of this section. Upon payment of the amount established, the director shall cancel the suspension period. The director shall cause any payment to be paid to the treasurer of the state of Idaho for credit to the state's general account in the state operating fund.

(3) The suspension of a license for the sale of liquor or beer shall automatically result in the suspension of any license for the sale of wine held by the same licensee and issued for the same premises or location. Such additional suspension shall be equal in length to and run concurrently with the period of the original suspension.

(4) When a proceeding to revoke or suspend a license has been or is about to be instituted, during the time a renewal application of such license is pending before the director, the director shall renew the license notwithstanding the pending proceedings, but such renewed license may be revoked or suspended without hearing if and when the previous license is, for any reason, revoked or suspended. [1971, ch. 156, § 31, p. 760; am. 1973, ch. 144, § 8, p. 281; am. 1974, ch. 27, § 74, p. 811; am. 1979, ch. 145, § 3, p. 445; am. 1980, ch. 221, § 1, p. 493; am. 1981, ch. 199, § 3, p. 351; am. 1984, ch. 221, § 13, p. 530; am. 1991, ch. 50, § 3, p. 91; am. 1993, ch. 347, § 3, p. 1290.]

STATUTORY NOTES

Cross References. — State tax commission, § 63-101.

Compiler's Notes. — The bracketed insertion in subsection (1) was added by the compiler.

Effective Dates. — Section 196 of S.L. 1974, ch. 27 provided that the act should take effect on and after July 1, 1974.

Section 2 of S.L. 1980, ch. 221 declared an emergency. Approved March 28, 1980.

23-1332. Sale by by-the-drink liquor licensees. — Retailers holding valid licenses for the retail sale of liquor by the drink pursuant to chapter 9, title 23, Idaho Code, may sell wine for consumption on or off the licensed premises. Persons holding a valid wine by the drink [wine-by-the-drink] license may sell wine for consumption on the premises only. Retailers who do not possess a valid license for the retail sale of liquor by the drink, or retailers who do not have a valid wine by the drink license [wine-by-the-drink], shall not permit consumption of wine on the licensed premises and

may sell the wine only in its original unbroken container. Provided however, that wineries whose business does not include the sale of wine by the drink may provide free single-serving samples of two (2) ounces or less to customers for the purpose of sales promotion upon the winery premises or upon the premises of a retail wine outlet which retails exclusively the wine product of that winery and which is wholly owned and operated thereby. Wine sold for consumption or dispensed on the licensed premises may be sold, consumed or dispensed only during hours that beer can be sold, consumed or dispensed pursuant to the laws of this state. Wine sold by the retailer for consumption off the premises of the retailer may be sold only during the hours that beer may be sold pursuant to the laws of this state. [1971, ch. 156, § 32, p. 760; am. 1973, ch. 144, § 9, p. 281; am. 1983, ch. 165, § 1, p. 471; am. 1987, ch. 169, § 7, p. 330.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions were added by the compiler.

23-1333. Open or unsealed containers of wine in motor vehicles on highways prohibited. — No person may, while operating or riding in or upon a motor vehicle upon a public highway of this state, have in his possession any wine in an open or unsealed container of any kind. [1971, ch. 156, § 33, p. 760.]

23-1334. Minors — Authorization to deliver. — (a) The prohibitions on possession of wine by any person under the age of twenty-one (21) years do not apply to possession by a person under the age of twenty-one (21) years making a delivery in pursuance of the order of his parent or in pursuance of his employment, or when such person under the age of twenty-one (21) years is in a private residence accompanied by his parent or guardian and with such parent's or guardian's consent.

(b) Any person who shall, by any means, represent to any retailer or distributor or the agent or employee of such retailer or distributor, that any other person is twenty-one (21) years or more of age, when in fact such other person is under the age of twenty-one (21) years, for the purpose of entering licensed premises or inducing such retailer or distributor, or the agent or employee of such retailer or distributor, to sell, serve, or dispense wine to such other person shall be guilty of a misdemeanor. [1971, ch. 156, § 34, p. 760; am. 1972, ch. 331, § 1, p. 833; am. 1976, ch. 292, § 1, p. 1010; am. 1987, ch. 212, § 14, p. 448; am. 1991, ch. 269, § 4, p. 660; am. 1994, ch. 60, § 1, p. 119; am. 1999, ch. 59, § 11, p. 151.]

STATUTORY NOTES

Cross References. — Punishment for misdemeanor when otherwise not provided, § 18-113.

Effective Dates. — Section 2 of S.L. 1972,

ch. 331 provided the act should take effect on and after July 1, 1972.

Section 16 of S.L. 1987, ch. 212 declared an emergency. Approved March 31, 1987.

23-1335. Violations of act misdemeanors. — Any person who violates any of the provisions of this act or fails to comply with any of the terms and conditions of this act shall be guilty of a misdemeanor. [1971, ch. 156, § 35, p. 760.]

STATUTORY NOTES

Cross References. — Punishment for misdemeanor when otherwise not provided, § 18-113.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 23-1301.

Section 36 of S.L. 1971, ch. 156 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect

the validity of the remaining portions of this act."

Effective Dates. — Section 37 of S.L. 1971, ch. 156 read: "This act shall take effect upon the expiration of sixty (60) days from the end of the First Regular Session of the Forty-first Legislature of the state of Idaho; provided, however, no retail wine license shall be issued by the commissioner prior to the first day of July, 1971."

23-1336. Wine sold or donated to persons or associations for benevolent, charitable or public purposes. — In the event that wine has been sold or donated to a person or association which desires to dispense or sell such wine and to donate the proceeds from the sale or dispensing thereof for benevolent, charitable or public purposes, the director may issue a permit authorizing such sale or dispensing of wine by such person or association if the director is satisfied that said proceeds, after deducting reasonable expenses incurred in conjunction with the sale or dispensing thereof, will be donated for such benevolent, charitable or public purpose. The director shall prescribe the form of the application for such permit, which application may require disclosure of names of sponsors; donors, quantities and types of wine products donated; the retailer, if any, designated by such person or association to receive, store or dispense donated wine; the dates and hours during which the permit is to be effective, not to exceed three (3) consecutive days; and such other information as the director may require. The director shall collect a twenty dollar (\$20.00) fee for the event for which the permit is to be effective. The director may require that the applicant submit a report to the director after the benevolent, charitable or public purpose event showing the disposition of funds from the event. Should the director determine that the applicant or its representatives is violating, or has in the past violated, any law pertaining to the dispensing or sale of wine by a licensed retailer relating to hours of sale, or relating to dispensing wine to underaged persons, or has failed in the past to submit such information as may have been requested by the director, such permit may be summarily suspended by the director, prior to hearing, or may be denied pending a hearing. A licensed retailer may, on behalf of the permittee, receive or store wine to be used at the event, and may dispense such wine to attendees of the benevolent, charitable or public purpose event for which the permit has been issued. [I.C., § 23-1336, as added by 1991, ch. 162, § 2, p. 389; am. 1994, ch. 14, § 2, p. 20.]

STATUTORY NOTES

Prior Laws. — Former § 23-1336, which comprised I.C. § 23-1336, as added by 1988, ch. 334, § 1, p. 1000, was repealed by S.L. 1991, ch. 162, § 1.

23-1337. Alcohol beverage catering permit. — Any person who is the holder of an Idaho winery license shall be eligible to obtain an alcohol beverage catering permit. [I.C., § 23-1337, as added by 1992, ch. 235, § 1, p. 703; am. 1999, ch. 58, § 6, p. 146.]

23-1338. Wine product service and sales — Sponsored events. — (1) Any person who is the holder of an Idaho winery license is authorized to serve or sell any wine product of that winery at events of seven (7) days' duration or less sponsored by any group, organization, person or political subdivision. Each participating winery must make its own arrangements with the sponsoring group, organization, person or political subdivision. Service and sales under the authority of this section may occur only in counties that permit the sale of wine in accordance with section 23-1304, Idaho Code, and any service or sales under the provisions of this section must comply with all applicable limitations and requirements regarding day and hour of sale, age and condition of purchasers and all other requirements of any regulatory ordinance adopted pursuant to the authority of section 23-1318, Idaho Code, by the city or county in whose jurisdiction the event is to take place.

(2) At least seven (7) days prior to the date on which the sponsored event is to commence, the winery shall notify by electronic mail the Idaho state police, alcohol beverage control bureau, and the chief of police of the incorporated city in which the sponsored event will be held, if the event is to be held in an incorporated city, or the sheriff of the county in which the sponsored event is to be held, if the event will not be held in an incorporated city, that wine will be served or sold by the winery at the sponsored event. The notice shall provide the following information:

- (a) The name and address of the winery and the number of its state winery license;
 - (b) The dates and hours that wine will be served or sold;
 - (c) The name of the group, organization, person or political subdivision sponsoring the event; and
 - (d) The address at which the wine will be served or sold, and if a public building, the rooms in which the wine will be served or sold.
- (3) Within three (3) business days after receiving the notice, the alcohol beverage control bureau shall respond to the winery. An approval by the alcohol beverage control bureau shall serve as authorization for the event, and shall be displayed during all hours that wine is served or sold at the sponsored event.

(4) Neither the winery nor any person owning an interest in the winery, nor any employee, contractor or business associate of the winery shall qualify as an event sponsor under the provisions of this section.

(5) Neither a city nor a county license or permit is required for the activities authorized pursuant to the provisions of this section. [I.C., § 23-1338, as added by 2007, ch. 289, § 3, p. 821.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 2007, ch. 289 declared an emergency. Approved March 30, 2007.

CHAPTER 14

HOSPITALITY CABINETS

SECTION.

- 23-1401. Definitions.
- 23-1402. Hospitality cabinet sales.
- 23-1403. Hospitality cabinet contents.
- 23-1404. Hospitality cabinet.
- 23-1405. Access restrictions.

SECTION.

- 23-1406. Storage and restocking.
- 23-1407. County option — Resolution of county commissioners.
- 23-1408. Director to promulgate rules.
- 23-1409. Short title.

23-1401. Definitions. — As used in this chapter:

(1) “Alcoholic beverages” means such beverages as defined in section 23-105, Idaho Code, as alcoholic liquor, including alcohol, spirits, wine or any combination thereof, and beverages defined in section 23-1001, Idaho Code, as beer.

(2) “Legal drinking age” means the age when a person is legally allowed to purchase or consume any alcoholic beverage, as provided in section 23-615, Idaho Code.

(3) “Hospitality cabinet” means a closed container, either refrigerated in whole or in part or nonrefrigerated, where access to the interior portion containing alcoholic beverages are contained is restricted by means of a locking device which requires the use of a key, magnetic card, or similar device.

(4) “Qualified facility” means a hotel, inn or motel which is licensed to sell alcoholic beverages for on-premises consumption and which contains guest room accommodations. It shall also include condominiums owned or managed by an otherwise qualified facility.

(5) “Qualified registered guest” means each person of legal drinking age who signs the guest register of a qualified facility or takes some other equivalent action for the purpose of registering as a guest of such qualified facility. [I.C., § 23-1401, as added by 1989, ch. 208, § 1, p. 510; am. 1999, ch. 59, § 12, p. 151.]

23-1402. Hospitality cabinet sales. — Notwithstanding any other statute, any qualified facility, which is licensed to sell any alcoholic beverage on its premises, may also sell such beverages in sealed containers in individual portions to its qualified registered guests by means of a hospitality cabinet located in the rooms of these qualified registered guests, provided all conditions of this chapter are met. [I.C., § 23-1402, as added by 1989, ch. 208, § 1, p. 510.]

23-1403. Hospitality cabinet contents. — (1) The type of alcoholic beverages contained in any hospitality cabinet of any qualified facility shall be limited to those beverages licensed for sale on such premises.

(2) Alcoholic beverage container sizes shall conform as follows:

- (a) Distilled spirits, "miniature" bottles of fifty (50) milliliters or less,
- (b) Wine, one-half (1/2) bottles, splits or less, and
- (c) Beer, twelve (12) ounces or less.

(3) The hospitality cabinet shall contain no more than thirty (30) individual portions of alcoholic beverages at any one time. [I.C., § 23-1403, as added by 1989, ch. 208, § 1, p. 510.]

23-1404. Hospitality cabinet. — A hospitality cabinet may be part of another furniture unit or device, whether refrigerated in whole or in part or nonrefrigerated, from which nonalcoholic beverages or food may be purchased by the guests in qualified facility guest rooms. However, in that event, the portion of the hospitality cabinet or similar device in which alcoholic beverages are stored shall be a hospitality cabinet as defined in section 23-1401, Idaho Code. [I.C., § 23-1404, as added by 1989, ch. 208, § 1, p. 510.]

23-1405. Access restrictions. — (1) Those portions of a hospitality cabinet containing alcoholic beverages must remain locked at all times when a guest room is unrented, except for taking inventory or restocking and replenishing the hospitality cabinet.

(2) Access to a hospitality cabinet in a particular guest room shall be provided, whether by furnishing a key, magnetic card or similar device, only to a qualified registered guest of legal drinking age, if any, registered to stay in the guest room.

(3) Before providing a key, magnetic card or similar device required to obtain access to the hospitality cabinet in a particular guest room to the qualified registered guest, the licensee shall verify that such qualified registered guest is of legal drinking age.

(4) A key, magnetic card or similar device required to obtain access to the hospitality cabinet in a particular guest room shall only be given to the qualified registered guest if requested by that registered guest and if such guest is not visibly or obviously intoxicated. [I.C., § 23-1405, as added by 1989, ch. 208, § 1, p. 510.]

23-1406. Storage and restocking. — (1) All alcoholic beverages, which are used to restock and replenish a facility's hospitality cabinets, shall be kept locked in a separate, secure room or cabinet, except when the hospitality cabinets are being restocked and replenished.

(2) The hospitality cabinets can be restocked and replenished with alcoholic beverages only during those hours when liquor can be sold as provided in section 23-927, Idaho Code. [I.C., § 23-1406, as added by 1989, ch. 208, § 1, p. 510.]

23-1407. County option — Resolution of county commissioners. — There is hereby granted to the board of county commissioners of each of the several counties of the state the right and authority to disallow the use of hospitality cabinets, as defined in this chapter, within the borders of their

respective counties. This right and authority may be exercised by the board of county commissioners by resolution, regularly adopted, which provides that hospitality cabinets, as defined in this chapter, shall be disallowed within the county. The resolution shall take effect three (3) months after receipt of certification thereof by the director of the Idaho state police and notification of qualified facilities within the county. Hospitality cabinets shall remain disallowed within the county so long as the resolution remains in effect. [I.C., § 23-1407, as added by 1989, ch. 208, § 1, p. 510; am. 2000, ch. 469, § 73, p. 1450.]

23-1408. Director to promulgate rules. — For the purpose of the administration of this chapter, the director of the Idaho state police shall promulgate and publish such rules as the director may deem necessary for carrying out the provisions of this chapter. [I.C., § 23-1408, as added by 1989, ch. 208, § 1, p. 510; am. 2000, ch. 469, § 74, p. 1450.]

23-1409. Short title. — This act shall be known as the “Hospitality Cabinet Act of 1989.” [I.C., § 23-1409, as added by 1989, ch. 208, § 1, p. 510.]

STATUTORY NOTES

Compiler’s Notes. — The term “this act” refers to 1989, ch. 208, which is codified as §§ 23-1401 to 23-1409.

Section 2 of 1989, ch. 208, reads: “The provisions of this act are hereby declared to be

severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.”

TITLE 24

ALIENS

CHAPTER

1. REAL PROPERTY RIGHTS. [REPEALED.]

CHAPTER 1

REAL PROPERTY RIGHTS

SECTION.

24-101 — 24-112. [Repealed.]

24-101 — 24-112. Citizenship — Corporations — Guardians — Trustees — Conveyances — Power of state. [Re- pealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, p. 160; I.C.A., §§ 23-101 — 23-112, were re-
which comprised S.L. 1923, ch. 122, §§ 1-12, pealed by S.L. 1955, ch. 96, § 1, p. 219.

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Seeds and plants, §22-1503.

Certified applicator.

Pesticides, §22-3401.

Certified potatoes.

Seed potatoes, §22-501.

Certifying agency.

Pure seeds, §22-414.

Chemical.

Pesticides, §22-3401.

Chemigation.

Pesticides, §22-3401.

Club.

Retail sale of liquor by the drink,
§23-902.

Colony.

Bees, §22-2502.

Comb.

Bees, §22-2502.

Commercial beekeeper.

Bees, §22-2502.

DEFINED TERMS —Cont'd**Commercial channels.**

Barley marketing promotion,
§22-4003.

Oilseed research and development,
§22-4703.

Pea and lentil commission, §22-3503.

Wheat marketing promotion,
§22-3303.

Commodity dealer law.

Hops industry promotion, §22-3103.

Compliance agreement.

Plant pests, §22-2005.

Compost.

Commercial fertilizers, §22-603.

Soil and plant amendments,
§22-2203.

Composting.

Commercial fertilizers, §22-603.

Soil and plant amendments,
§22-2203.

Conservation plan.

Soil conservation districts, §22-2717.

Containers.

Potato grading and packaging,
§22-907.

Containment.

Noxious weeds, §22-2402.

Contract.

Seed buyers, §22-5102.

Control.

Noxious weeds, §22-2402.

Plant pests, §22-2005.

Control authority.

Noxious weeds, §22-2402.

Control order.

Plant pests, §22-2005.

Convention.

Retail sale of liquor by the drink,
§23-902.

Conveyance.

Plant pests, §22-2005.

Cooperative weed management area (CWMA), §22-2402.**Coproduet.**

Commercial fertilizers, §22-603.

Soil and plant amendments,
§22-2203.

Crop management area.

Plant pests, §22-2005.

Crop reduction program.

Barley marketing promotion,
§22-4003.

Wheat marketing promotion,
§22-3303.

Crop seed.

Plant pests, §22-2005.

Purity, §22-414.

DEFINED TERMS —Cont'd

Cross-country skiing facilities,
§23-952.

Current signage.

Farm machinery, §28-23-102.

Customer-formula fertilizer,
§22-603.

Customer formula mix.

Soil and plant amendments,
§22-2203.

Dealer.

Alfalfa and clover seed industry,
§22-4203.

Apple commission, §22-3603.

Bean industry promotion, §22-2914.

Beer regulation, §23-1001.

Potato commission, §22-1204.

Deficiency.

Commercial fertilizers, §22-603.

Soil and plant amendments,
§22-2203.

Defoliant.

Pesticides, §22-3401.

Deliver or delivery.

Barley marketing promotion,
§22-4003.

Bean industry promotion, §22-2914.

Oilseed research and development,
§22-4703.

Pea and lentil commission, §22-3503.

Wheat marketing promotion,
§22-3303.

Delivery voucher.

Seed buyers, §22-5102.

Desiccant.

Pesticides, §22-3401.

Designated agency.

Soil conservation districts, §22-2717.

Designated agent.

Pesticides, §22-3401.

Designated member.

Beer suppliers, §23-1102.

Dessert wine, §23-1303.**Devices.**

Pesticides, §22-3401.

Diameter.

Potato grading and packaging,
§22-910.

Distribute.

Commercial fertilizers, §22-603.

Pesticides, §22-3401.

Seed potatoes, §22-501.

Soil and plant amendments,
§22-2203.

Distributor.

Beer suppliers, §23-1102.

Commercial fertilizers, §22-603.

DEFINED TERMS —Cont'd**Distributor —Cont'd**

County option kitchen and table wine
act, §23-1303.

Soil and plant amendments,
§22-2203.

District.

Soil conservation, §22-2717.

District No. 1.

Apple commission, §22-3603.

Cherry commission, §22-3703.

District No. 2.

Apple commission, §22-3603.

Cherry commission, §22-3703.

District No. 3.

Apple commission, §22-3603.

Domestic produced product.

County option kitchen and table wine
act, §23-1303.

Due notice.

Soil conservation districts, §22-2717.

Economically unacceptable impact.

Plant pests, §22-2005.

Economic impacts.

Plant pests, §22-2005.

Eligible applicant.

Soil conservation districts, §22-2717.

Endangered area.

Plant pests, §22-2005.

Environment.

Pesticides, §22-3401.

Environmental harm.

Invasive species, §22-1904.

Equipment.

Bees, §22-2502.

Eradication.

Noxious weeds, §22-2402.

Plant pests, §22-2005.

Exotic strain of bees, §22-2502.**Failure.**

Seed buyers, §22-5102.

Fairly well shaped.

Potato grading and packaging,
§22-910.

Farm implements.

Farm machinery, §28-23-107.

Farm products.

Marketing, §22-701.

Plant pests, §22-2005.

Fertilizer.

Commercial fertilizers, §22-603.

Pesticides, §22-3401.

Fertilizer material.

Commercial fertilizers, §22-603.

First purchaser.

Barley marketing promotion,
§22-4003.

DEFINED TERMS —Cont'd**First purchaser —Cont'd**

- Oilseed research and development,
§22-4703.
- Pea and lentil commission, §22-3503.
- Wheat marketing promotion,
§22-3303.

Florists stock.

- Nurseries and florists, §22-2302.

Flower seeds.

- Purity, §22-414.

Food products.

- Organic food products, §22-1102.

Foundation seed.

- Certification, §22-1503.

Free from.

- Plant pests, §22-2005.

Free from damage.

- Potato grading and packaging,
§22-910.

Free from serious damage.

- Potato grading and packaging,
§22-910.

Gaming.

- Retail sale of liquor by the drink,
§23-902.

General use pesticide, §22-3401.**Genetic purity.**

- Certification of seeds and plants,
§22-1503.

Gondola resort complex, §23-903.**Good faith.**

- Beer suppliers, §23-1102.

Government.

- Soil conservation districts, §22-2717.

Governmental.

- Soil conservation districts, §22-2717.

Grade.

- Commercial fertilizers, §22-603.

Grain.

- Plant pests, §22-2005.

Grower.

- Alfalfa and clover seed industry,
§22-4203.
- Apple commission, §22-3603.
- Barley marketing promotion,
§22-4003.
- Bean industry promotion, §22-2914.
- Cherry commission, §22-3703.
- Hops industry promotion, §22-3103.
- Mint industry, §22-3803.
- Nurseries and florists, §22-2302.
- Oilseed research and development,
§22-4703.
- Pea and lentil commission, §22-3503.
- Potato commission, §22-1204.
- Wheat marketing promotion,
§22-3303.

DEFINED TERMS —Cont'd**Grower's or collector's declaration.**

- Pure seeds, §22-414.

Guaranteed analysis.

- Commercial fertilizers, §22-603.

Handled in the primary channels of trade.

- Alfalfa and clover seed industry,
§22-4203.
- Hops industry promotion, §22-3103.
- Mint industry, §22-3803.

Handler.

- Bean industry promotion, §22-2914.
- Organic food products, §22-1102.
- Potato commission, §22-1204.

Hard seed.

- Purity, §22-414.

Hive.

- Bees, §22-2502.

Hobbyist beekeeper, §22-2502.**Hold order or stop sale.**

- Plant pests, §22-2005.

Honey by-products, §22-2803.**Honey producer, §22-2803.****Hops.**

- Promotion of industry, §22-3103.

Horticultural growing media.

- Soil and plant amendments,
§22-2203.

Hospitality cabinets, §23-1401.**Host.**

- Plant pests, §22-2005.

Hundredweight.

- Bean industry promotion, §22-2914.
- Potato commission, §22-1204.

Hybrid.

- Pure seeds, §22-414.

Idaho association of soil conservation districts (IASCD), §22-2717.**Idaho OnePlan.**

- Soil conservation districts, §22-2717.

Importer.

- County option kitchen and table wine
act, §23-1303.

Improper operation.

- Right to farm, §22-4502.

Inert matter.

- Pure seeds, §22-414.

Infected.

- Nurseries and florists, §22-2318.
- Plant pests, §22-2005.

Infested.

- Nurseries and florists, §22-2318.
- Plant pests, §22-2005.

In-state seed dealer.

- Pure seeds, §22-414.

DEFINED TERMS —Cont'd

Integrated weed management plan (IWMP), §22-2402.

Interdicted person.

Retail sale of liquor by the drink, §23-902.

Invasive species, §22-1904.

Investigational allowance.

Soil and plant amendments, §22-2203.

Investigation allowance.

Commercial fertilizers, §22-603.

Investigator.

Plant pests, §22-2005.

Irrigation system.

Pesticides, §22-3401.

Keg.

Beer, §23-1018.

Kind.

Pure seeds, §22-414.

Labeling.

Commercial fertilizers, §22-603.

Pesticides, §22-3401.

Pure seeds, §22-414.

Soil and plant amendments, §22-2203.

Labels.

Commercial fertilizers, §22-603.

Pesticides, §22-3401.

Soil and plant amendments, §22-2203.

Land.

Noxious weeds, §22-2402.

Pesticides, §22-3401.

Landowner.

Noxious weeds, §22-2402.

Soil conservation districts, §22-2717.

Landscape contractor.

Nurseries and florists, §22-2302.

Land user.

Soil conservation districts, §22-2717.

Legal drinking age.

Hospitality cabinets, §23-1401.

Licensee.

Retail sale of liquor by the drink, §§23-902, 23-942.

Licenses.

Retail sale of liquor by the drink, §23-902.

Lime.

Commercial fertilizers, §22-603.

Limited distribution.

Plant pests, §22-2005.

Liquor.

Retail sale of liquor by the drink, §23-902.

Liquor nuisance, §23-701.

DEFINED TERMS —Cont'd**Live performance.**

Alcoholic beverages, §§23-902, 23-1001, 23-1303.

Livestock.

Organic food product, §22-1102.

Lot.

Certification of seeds and plants, §22-1503.

Lot of seed.

Purity, §22-414.

Low proof spirit beverages.

County option kitchen and table wine act, §23-1303.

Management area.

Plant pests, §22-2005.

Manipulation.

Commercial fertilizers, §22-603.

Soil and plant amendments, §22-2203.

Manufacture.

Commercial fertilizers, §22-603.

Soil and plant amendments, §22-2203.

Manure.

Beef cattle environmental control act, §22-4904.

Mark.

Plant pests, §22-2005.

Member.

Cooperative marketing associations, §22-2602.

Micronutrient fertilizers.

Commercial fertilizers, §22-603.

Micronutrients.

Commercial fertilizers, §22-603.

Soil and plant amendments, §22-2203.

Minimum percentage.

Soil and plant amendments, §22-2203.

Mint, §22-3803.**Misbranded.**

Pesticides, §22-3401.

Mixed fertilizer.

Commercial fertilizers, §22-603.

Mixture.

Pure seeds, §22-414.

Modification.

Beef cattle environmental control act, §22-4904.

Modified treatment.

Noxious weeds, §22-2402.

Move.

Plant pests, §22-2005.

Mugged bag.

Potato grading and packaging, §22-907.

DEFINED TERMS —Cont'd**Mulch.**

Soil and plant amendments,
§22-2203.

Municipality.

Aeronautics administration, §21-101.

Municipal license.

Retail sale of liquor by the drink,
§23-902.

**National pollutant discharge
elimination system (NPDES).**

Beef cattle environmental control act,
§22-4904.

**Natural resources conservation
service (NRCS).**

Soil conservation districts, §22-2717.

Negligent operation.

Right to farm, §22-4502.

Nominating petition.

Soil conservation districts, §22-2717.

Nonagricultural activities.

Right to farm, §22-4502.

Noncompliance.

Beef cattle environmental control act,
§22-4904.

**Not regularly engaged in the
business.**

Nurseries and florists, §22-2302.

Noxious weed.

Prevention, §22-2402.

Noxious weed seeds.

Pure seed law, §22-414.

Nursery and/or flower shop.

Nurseries and florists, §22-2302.

**Nurseryman and or florists,
§22-2302.****Nursery stock, §22-2302.**

Plant pests, §22-2005.

Nutrient management plan.

Beef cattle environmental control act,
§22-4904.

Nutrient management standard.

Beef cattle environmental control act,
§22-4904.

Official.

Plant pests, §22-2005.

Officially controlled.

Plant pests, §22-2005.

Official sample.

Commercial fertilizers, §22-603.
Soil and plant amendments,
§22-2203.

Oilseed.

Oilseed research and development,
§22-4703.

Operate aircraft.

Aeronautics administration, §21-101.

DEFINED TERMS —Cont'd**Operation of aircraft.**

Aeronautics administration, §21-101.

Organic.

Soil and plant amendments,
§22-2203.

**Organically grown food products,
§22-1102.****Organic certification seal.**

Food products, §22-1102.

Organic food product, §22-1102.**Organic waste-derived material.**

Commercial fertilizers, §22-603.
Soil and plant amendments,
§22-2203.

Origin.

Pure seeds, §22-414.

Other ingredients.

Soil and plant amendments,
§22-2203.

Out-of-state seed dealer.

Pure seed law, §22-414.

Owner/ownership.

Plant pests, §22-2005.

Packaged fertilizer.

Commercial fertilizers, §22-603.

Participant.

Soil conservation districts, §22-2717.

Party.

Retail sale of liquor by the drink,
§23-902.

Passenger.

State law for aeronautics, §21-201.

Pathway.

Plant pests, §22-2005.

Peas and lentils, §22-3503.**Percent.**

Commercial fertilizers, §22-603.
Soil and plant amendments,
§22-2203.

Percentage.

Commercial fertilizers, §22-603.
Soil and plant amendments,
§22-2203.

Permit.

Plant pests, §22-2005.

Person.

Aeronautics administration, §21-101.
Airport zoning, §21-501.
Apple commission, §22-3603.
Bean industry promotion, §22-2914.
Beef cattle environmental control act,
§22-4904.

Beer regulation, §23-1001.

Beer suppliers, §23-1102.

Bees, §22-2502.

Commercial fertilizers, §22-603.

Commercial fish facilities, §22-4601.

DEFINED TERMS —Cont'd**Person —Cont'd**

- Cooperative marketing associations, §22-2602.
- County option kitchen and table wine act, §23-1303.
- Damages to aircraft, §21-701.
- Hops industry promotion, §22-3103.
- Mint industry, §22-3803.
- Noxious weeds, §22-2402.
- Nurseries and florists, §22-2302.
- Organic food products, §22-1102.
- Pesticides, §22-3401.
- Plant pests, §22-2005.
- Potato commission, §22-1204.
- Pure seed law, §22-414.
- Retail sale of liquor by the drink, §23-902.
- Seed buyers, §22-5102.
- Seed potatoes, §22-501.
- Soil and plant amendments, §22-2203.

Pest.

- Nurseries and florists, §22-2302.
- Pesticides, §22-3401.
- Plant pests, §22-2005.

Pest-free area.

- Plant pests, §22-2005.

Pesticide, §22-3401.**Pesticide dealer, §22-3401.****Pesticide equipment, §22-3401.****Pesticide industry representative, §22-3401.****Pest risk analysis.**

- Plant pests, §22-2005.

Petition.

- Soil conservation districts, §22-2717.

Phytosanitary.

- Plant pests, §22-2005.

Phytosanitary measures.

- Plant pests, §22-2005.

Place.

- Retail sale of liquor by the drink, §23-942.

Plant.

- Certification of seeds and plants, §22-1503.
- Plant pests, §22-2005.

Plant amendment, §22-2203.**Plant parts.**

- Certification of seeds and plants, §22-1503.

Plant regulator.

- Pesticides, §22-3401.

Plants for planting.

- Plant pests, §22-2005.

Political subdivision.

- Airport zoning, §21-501.

DEFINED TERMS —Cont'd**Possess.**

- Alcoholic beverages, §23-949.

Potatoes.

- Commission for potatoes, §22-1204.
- Seed potatoes, §22-501.

Preclearance.

- Plant pests, §22-2005.

Premises.

- Beer regulation, §23-1001.
- Retail sale of liquor by the drink, §23-902.

Prevention.

- Noxious weeds, §22-2402.

Primary nutrient.

- Commercial fertilizers, §22-603.

Private applicator.

- Pesticides, §22-3401.

Private hearing.

- Pure seed law, §22-414.

Processed.

- Soil and plant amendments, §22-2203.

Processing.

- Potato commission, §22-1204.

Processing plant.

- Alfalfa and clover seed industry, §22-4203.
- Apple commission, §22-3603.
- Cherry commission, §22-3703.

Processor.

- Alfalfa and clover seed industry, §22-4203.
- Apple commission, §22-3603.
- Aquaculture, §22-4402.
- Cherry commission, §22-3703.
- Pea and lentil commission, §22-3503.
- Potato commission, §22-1204.

Process wastewater.

- Beef cattle environmental control act, §22-4904.

Producer.

- Aquaculture, §22-4402.
- Organic food products, §22-1102.
- Pure seeds, §22-414.
- Seed buyers, §22-5102.

Production.

- Commercial fertilizers, §22-603.
- Hops industry promotion, §22-3107.

Production summary.

- Seed buyers, §22-5102.

Professional applicator.

- Pesticides, §22-3401.

Prohibited noxious weed seeds.

- Pure seed law, §22-414.

Project sponsor.

- Soil conservation districts, §22-2717.

DEFINED TERMS —Cont'd**Propeller.**

Damages to aircraft, §21-701.

Public nuisance.

Plant pests, §22-2005.

Public transportation.

Aeronautics administration, §21-101.

Qualified elector.

Regional airport bond issues,
§21-809.

Soil conservation districts, §22-2717.

Qualified facility.

Hospitality cabinets, §23-1401.

Qualified registered guest.

Hospitality cabinets, §23-1401.

Quarantine.

Noxious weeds, §22-2402.

Plant pests, §22-2005.

Quarantine pest.

Plant pests, §22-2005.

Queen apiary.

Bees, §22-2502.

Racing facility.

Retail sale of liquor by the drink,
§23-953.

Raw.

Soil and plant amendments,
§22-2203.

Reasonable standards and/or qualifications.

Beer suppliers, §23-1102.

Receipt.

Seed buyers, §22-5102.

Recognized types of sampling procedures.

Potato grading and packaging,
§22-910.

Records.

Pure seed law, §22-414.

Registrant.

Commercial fertilizers, §22-603.

Soil and plant amendments,
§22-2203.

Registration.

Plant pests, §22-2005.

Regulated article.

Plant pests, §22-2005.

Regulated nonquarantine pest.

Plant pests, §22-2005.

Regulated or restricted area.

Plant pests, §22-2005.

Regulated pest.

Plant pests, §22-2005.

Regulatory incident.

Plant pests, §22-2005.

Rehabilitation.

Noxious weeds, §22-2402.

DEFINED TERMS —Cont'd**Restaurant.**

Retail sale of liquor by the drink,
§23-942.

Restricted area.

Pesticides, §22-3401.

Restricted noxious weed seeds.

Pure seed law, §22-414.

Restricted-use pesticide, §22-3401.**Restrictive measure.**

Plant pests, §22-2005.

Retailer.

Beer regulation, §23-1001.

County option kitchen and table wine
act, §23-1303.

Retail wine license.

County option kitchen and table wine
act, §23-1303.

Retaliatory action.

Beer suppliers, §23-1102.

Riparian.

Noxious weeds, §22-2402.

Riparian land.

Soil conservation districts, §22-2717.

Rules.

Retail sale of liquor by the drink,
§23-902.

Sales.

Barley marketing promotion,
§22-4003.

Nurseries and florists, §22-2302.

Oilseed research and development,
§22-4703.

Pea and lentil commission, §22-3503.

Wheat marketing promotion,
§22-3303.

Sampling.

Potato grading and packaging,
§22-910.

Scale weight ticket.

Seed buyers, §22-5102.

Seed.

Certification, §22-1503.

Seed buyers, §22-5102.**Seed crops.**

Seed buyers, §22-5102.

Seed dealer.

Pure seed law, §22-414.

Seed facility.

Seed buyers, §22-5102.

Sell.

Nurseries and florists, §22-2302.

Seller.

Barley marketing promotion,
§22-4003.

Oilseed research and development,
§22-4703.

DEFINED TERMS —Cont'd**Ship.**

Alfalfa and clover seed industry,
§22-4203.

Apple commission, §22-3603.

Cherry commission, §22-3703.

Shipment.

Bean industry promotion, §22-2914.

Plant pests, §22-2005.

Potato commission, §22-1204.

Shipper.

Potato commission, §22-1204.

Significant damage or harm.

Plant pests, §22-2005.

Similarly situated distributors in adjoining states.

Beer suppliers, §23-1102.

Soft rot or wet breakdown.

Potato grading and packaging,
§22-910.

Soil amendment, §22-2203.**Soil conservation districts,
§22-917.****Spare parts.**

Damages to aircraft, §21-701.

Specialized repair tools.

Farm machinery, §28-23-102.

Specialty fertilizer, §22-603.**Specifications.**

Soil conservation districts, §22-2717.

Spirits.

State liquor division, §23-105.

Spray adjuvant.

Pesticides, §22-3401.

Standard.

Soil conservation districts, §22-2717.

State.

Aeronautics administration, §21-101.

Airport zoning, §21-501.

State airway.

Aeronautics administration, §21-101.

State liquor store.

Retail sale of liquor by the drink,
§23-902.

**State noxious weed advisory
committee.**

Noxious weeds, §22-2402.

State plant regulatory official.

Plant pests, §22-2005.

State quarantine.

Plant pests, §22-2005.

**State restricted pesticide use,
§22-3401.****Stop sale.**

Pure seed law, §22-414.

Storage container.

Commercial fertilizers, §22-603.

DEFINED TERMS —Cont'd**Storage facility.**

Commercial fertilizers, §22-603.

Stored for withdrawal.

Seed buyers, §22-5102.

Structure.

Airport zoning, §21-501.

Submitted samples.

Potato grading and packaging,
§22-910.

Substantial stockholder.

Beer suppliers, §23-1102.

Supervisor.

Soil conservation districts, §22-2717.

Supplier.

Beer suppliers, §23-1102.

Suppressive area.

Plant pests, §22-2005.

Surveys.

Plant pests, §22-2005.

Table wine, §23-1303.**Tax.**

Potato commission, §22-1204.

Theater.

Alcoholic beverages, §§23-902,
23-1001, 23-1303.

Theme park.

Retail sale of liquor by the drink,
§23-954.

This state.

Aeronautics administration, §21-101.

Airport zoning, §21-501.

Ton.

Commercial fertilizers, §22-603.

Soil and plant amendments,
§22-2203.

Tonnage-only distributor.

Commercial fertilizers, §22-603.

Total maximum daily load (TMDL).

Soil conservation districts, §22-2717.

Transfer of distributor's business.

Beer suppliers, §23-1102.

Transfers.

Seed buyers, §22-5102.

Tree.

Airport zoning, §21-501.

Tree seed and shrub seed.

Pure seed law, §22-414.

Tubers.

Certification of seeds and plants,
§22-1503.

Unauthorized discharge.

Beef cattle environmental control act,
§22-4904.

Undamaged.

Potato grading and packaging,
§22-907.

DEFINED TERMS —Cont'd**Under the direct supervision of a certified private applicator.**

Pesticides, §22-3401.

Undesirable plant.

Plant pests, §22-2005.

Unreasonable adverse effects on the environment.

Pesticides, §22-3401.

Vaporized alcohol.Alcohol without liquid devices,
§23-616.**Variety or strain.**Certification of seeds and plants,
§22-1503.

Pure seeds, §22-414.

Vegetable seeds.

Purity, §22-414.

Vendor.

Organic food products, §22-1102.

Verification of label claims.Soil and plant amendments,
§22-2203.**Vintner.**County option kitchen and table wine
act, §23-1303.**Waste-derived fertilizer.**

Commercial fertilizers, §22-603.

Waste-derived soil or plant amendment, §22-2203.**Wastewater storage and containment facilities.**Beef cattle environmental control act,
§22-4904.**Waters.**

Noxious weeds, §22-2402.

Waters of the state.Beef cattle environmental control act,
§22-4904.**Weed control advisory committee, §22-2402.****Weed seeds.**

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